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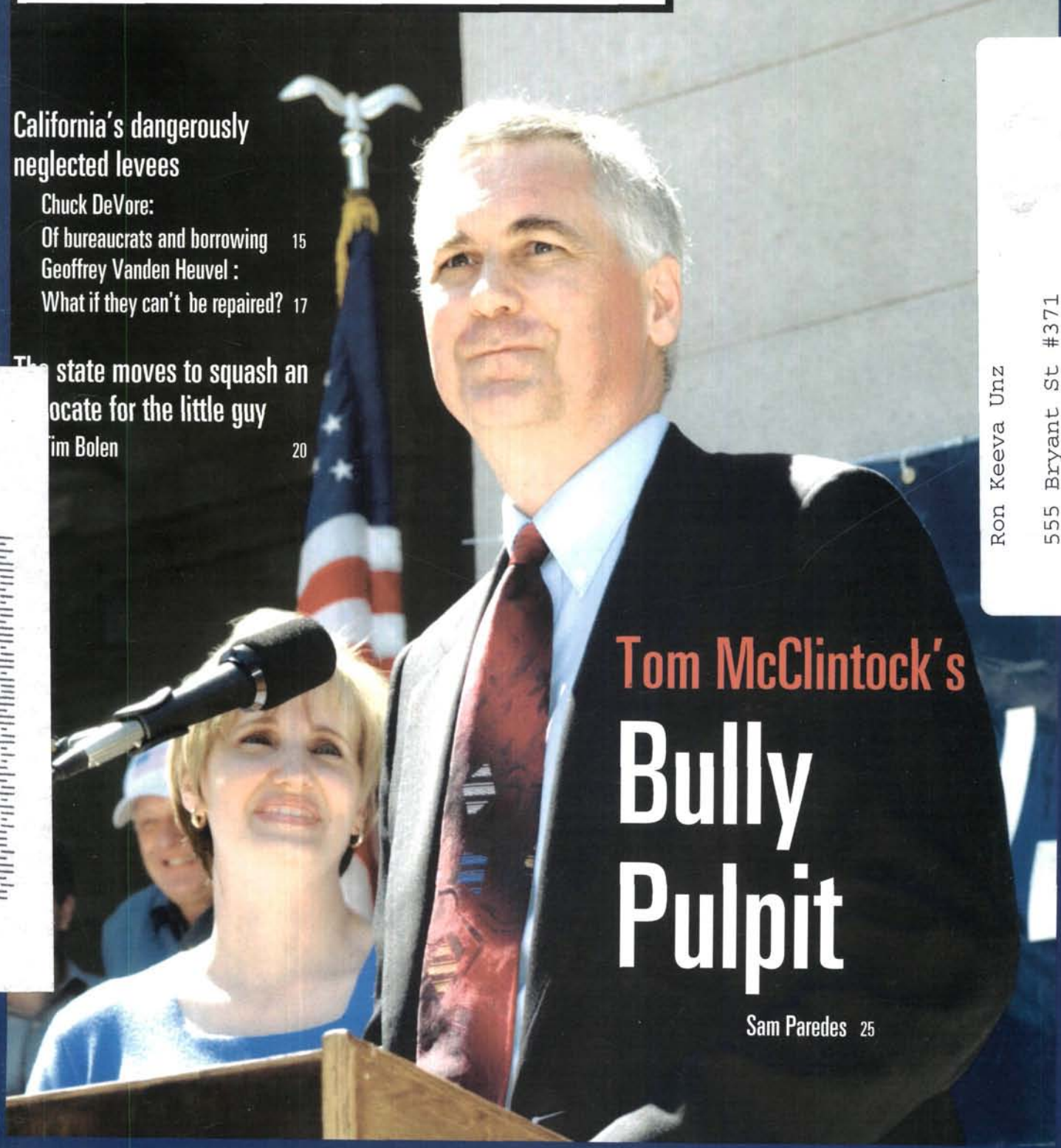
The army corps' 'navigable waters' canard
M. David Stirling 7

Our stake in Mexico's election
Bill Mundell 12

California's dangerously neglected levees
Chuck DeVore:
Of bureaucrats and borrowing 15
Geoffrey Vanden Heuvel :
What if they can't be repaired? 17

The state moves to squash an
ocate for the little guy
im Bolen 20



Tom McClintock's Bully Pulpit

Sam Paredes 25

Ron Keeva Unz
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A PRISON-MADE KNIFE ISN'T THE ONLY WEAPON TO FEAR IN PRISON

JUST THINK HOW EASY IT IS FOR AN INMATE TO COME UP WITH A "GASSING" WEAPON

"The inmate picked up a cup of what had the strong odor of urine and threw it in my face, into my eyes and mouth. With no immediate escape in sight, the inmate grabbed another cup of the six that he had lined up and threw the cupful in my face."

On average, 10 correctional peace officers are assaulted every day in California's prisons -- many in a disgusting and deadly way. They are "gassed" by inmates.

In a gassing assault, inmates use their collected blood, urine and/or feces as a weapon against officers, saving their bodily fluids in paper cups and throwing them at unsuspecting officers.

But more than disgusting, these attacks have the potential to be lethal if the inmate is infected with a disease such as AIDS or hepatitis -- diseases that can be unknowingly passed from the officer to his or her family members.

Gassing is a daily occurrence for the brave men and women who work the toughest beat in the state to keep you and your family safe.

CALIFORNIA CORRECTIONAL PEACE OFFICERS ASSOCIATION

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FEATURES

COVER ARTICLE: Tom McClintock's Bully Pulpit By Sam Paredes 25
Tom McClintock's lieutenant governor candidacy gives Republicans a chance to recover from the squandered opportunities of the recall and to make their bedrock case to the voters.

Post-Katrina sensibility 15
Californians' attention is on our dangerously neglected levee system. Two authors comment: Of bureaucrats and borrowing, by Chuck DeVore, and What if the levees *can't* be repaired? by Geoffrey Vanden Heuvel

The state moves to squash an advocate for the little guy By Tim Bolen 20
The (petty) Empire Strikes Back: for defending ordinary Californians against rapacious bureaucrats, a man finds himself hounded by the state Bar, his business raided, and his livelihood threatened.

DEPARTMENTS

Correspondence 2
Sacramento Spectator 3
The Working Press By George Neumayr 4
Facts on Gun Control By Sam Paredes 6
Those in power over us By M. David Stirling 7
The Law By Harold Johnson 10
Business Trends By Bill Mundell. 12

ARTS & CULTURE

Criticus By G.B. Tennyson 31
Gone to earth — A Critical necrology for the previous year, concentrating on the odd, the offbeat, and the eccentric. No wonder so many of them turn out to be British.

First Things By John Kurzweil 36
Americans, especially conservatives, should never feel awkward standing up for *good.*

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CORRESPONDENCE

Of courage, convictions, and a most uncivil war

Thanks for your morale-boosters ("A *Party with the courage of no convictions*," by John Kurzweil, and "A most uncivil war," by H.L. Richardson and John Kurzweil, *CPR*, Jan./Feb. 2006). In the interest of keeping things in perspective, I like (in both good political times and bad) to think of T.S. Eliot's line that there are no lost causes because there are no gained causes.

A lot of conservatives figuratively "went home" when Ronald Reagan was elected in 1980, thinking the war was won and over for good. Similarly, conservatives are sometimes tempted to "go home" after tough setbacks like the Special Election fiasco, thinking the cause is hopeless. Of course, it is neither won and over nor hopeless. If Stalin's empire can be overthrown, the human spirit is never finished; if millions of Americans can think Hillary Clinton belongs in the White House, no triumph over human idiocy can ever be considered complete.

So be of good cheer! Restate the principles; rebuild the movement; fight the good fight. This battle goes on. The difference is which side you were on during your life and whether or not you persevered for the good to the end.

James Rhodes
Valencia

I'd like to offer a hopeful note in response to H.L. Richardson's and John Kurzweil' excellent survey of our nation's Christian roots, "A most uncivil war." The vast right-wing conspiracy finally seems to have gotten its act together on judges, or at least is finally beginning to realize how important they are, as evidenced by the movement's forceful and successful derailing of the disaster that almost was, President Bush's Harriet Meier nomination. Under either Reagan or the president's father, the Meier nomination would probably have sailed through. The vetting procedures employed for judges in those administrations was a hold-over from the days when a consensus existed in both parties that judges were outside of politics, a consensus now as dead as the once-upon-a-time bipartisanship that existed on foreign policy and war. The 1960s leftists who took over the Democrat Party in 1972 see all politics as merely a struggle for power; judges have power, so it must be grabbed and used to advance the revolution, like any other power base. Republicans, as usual, have been very slow to appreciate the sea change. But now, at last, they appear to recognize the ruthlessness of the opposition for what it is and are prepared to fight as hard as the left does on judges. That will be enough to win, as long, anyway, as we hold the White House.

Ted Gustafson
Bakersfield

Killing Elmo

Thanks for "What is wrong with Washington?" (Bruce Bialosky, *CPR*, (Jan./Feb. 2006). I have long suspected that somehow, just as men and women are about to enter Congress for the first time (or are about to take Capitol staff jobs), they are secretly whisked into some medical lab presided over by a diabolical doctor who severs certain strategically-selected synapses making them forget where they came from and why they went to Washington, and to lose their ability to perceive the importance of anything beyond their own immediate and most superficial impulses.

Actually, I don't believe this, but I am tempted to consider the possibility when I read statements from people in Washington like "Why do you want to

(Please turn to page 14)

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SACRAMENTO SPECTATOR

Writing *before* the upcoming state GOP convention for readers, most of whom will not see this column until *after* the convention, strains your *Spectator's* predictive powers. I am forced to feed my eavesdropping-gathered saloon and stylish *soiree* gossip into the crystal ball so as to foresee what will still be current two weeks from now. It's probably a safe bet, though, that various resolutions, whether you consider them "anti-Arnold" or "pro-Republican," will remain on the front burner.

Though I'm about as conservative as they come and have been appalled at the Kennedy appointment and Ahnolt's left veer, I thought the move to withdraw the Party's endorsement from the governor was just plain silly. Let's fight over our ideas, fight the governor on policy, staking out Ronald Reagan's banner of "bold, bright colors." The endorsement business was a distraction from the real policy problems of spending, bonding, and appointing liberal Democrats to lifetime sinecures as judges. It's just as well the de-endorsement mini-movement appears to have been given a decent burial.

I'll give the governor and his Keystone Kops strategists this much credit: they have managed, at least temporarily, to bridge the divide between conservatives and moderates. Everybody I talked to — or overheard following their consumption of a tongue-loosening third or fourth adult beverage — was either angry or in despair about budget issues *and* judgeships. The governor's folks may apply the screws at the convention and whip the troops into line to "win" floor votes, but in private conversation the Brooks Firestone and New Majority types sound indistinguishable from CRA members: disappointed, confused, angry.

Should anyone be surprised, with two Democrats — Susan Kennedy and Maria Shriver — essentially calling the shots, that a gubernatorial tin ear has developed about the GOP base? Not just the vast right wing conspiracy part of his base — *all* of the base. It is clear that if delegates to this convention were to vote *only* considering the policy issues, the governor would be repudiated by large margins on bonding, pushing deficits into future budget years, raising the minimum wage, and stacking the courts with soft-on-crime liberals.

Agreement on economic and law-and-order issues, after all, was supposed to be the tie that binds rank and file Republicans to social-issues liberal Schwarzenegger in the first place. If the GOP base — moderate, conservative, or mugwump — perceives the governor abandoning them on those issues, what is left?

Parties and candidates with unmotivated bases lose elections — usually by a lot. I reference the congressional elections of 1994 and 1998 when first Democrats, and then Republicans, found out what happens when the base grows *blasé*.

As one who still wishes this governor well and wants him to succeed (at least the version of him that campaigned in the recall, 'way back in 2003), I hope someone in his office is attuned to the cavernous depth of antipathy and distrust that has opened beneath his feet. Frankly, I expected to hear at least half-hearted defenses of the governor from moderates, and was stunned to learn how little enthusiasm remains for the governor, or, more correctly, for his program as currently spelled out, among even those you'd expect to be his stalwarts.

If nobody in the governor's office takes this problem seriously enough to instigate bold strokes to address it, November election night could be a very somber affair ... except for the producers of *Terminator 4*.

— *A.P.C.*

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The Working Press

The media's think-alike, talk-alike problem

How do you cover America's diversity of opinion with newsrooms where none exists?

GEORGE NEUMAYR

OCCASIONALLY, SOMNOLENT, navel-gazing media forums produce brief moments of truth-telling. UCSB's student newspaper *Daily Nexus* reported in mid-January on one such moment during a discussion hosted by the school's Center for Film, Television, and New Media. MSNBC host Tucker Carlson, appearing with radical leftist author Eric Alterman, exclaimed at one point: "Everybody in journalism is pro-choice, pro-gun control, and for gay marriage ... When you only have people that all think the same, you do not have good coverage. You can't cover America until you have a newsroom that looks like America ... who thinks like America."

I witnessed a similar bit of truth-telling that buttressed Carlson's point, albeit inadvertently, last year on C-SPAN. The occasion was another of these UCSB media forums broadcast, again featuring a legion of committed liberal journalists. *Slate.com* Editor Jacob Weisberg, sitting next to *New York Times* Executive Editor Bill Keller, blurted out that he regarded science coverage under Keller to be too deferential to scientists who argue that nature is intelligently designed. Why do you give them "equal time" in stories covering their debate with Darwinists? Weisberg asked Keller. Would you give equal time to segregationists?

Naturally, Keller didn't respond to the outrageous suggestion that Intelligent Design proponents stand on the same plane of irrationality as segregationists. But he did note that the *Times* can't just ignore this debate and chuckled at Weisberg's naïve suggestion that anyone who read the *New York Times's* Science section would consider the paper impartial on the matter of evolutionary theory. His chuckle told Weisberg: don't worry, Jacob, we are still in the tank for Darwin.

* * *

Stephanie Simon, a correspondent for the *Los Angeles Times,* wrote a story last November about a Fayetteville, Arkansas, abortionist named Dr. William Harrison and his clinic. The story was notable for Harrison's frank shamelessness. He declared to Simon his pride at having "terminated at least 20,000 pregnancies." Simon, writing for the Web site of the Casey Journalism Center, revealed that after her article appeared she received "several calls along the lines of: 'How could you?'"

Describing reader reaction to her article, Simon continued:

"Supporters of abortion-rights were incensed that I had included a comment from a young woman who terminated her pregnancy in part because she otherwise wouldn't have fit into her wedding dress. They were furious that I described an abortion in detail, including the ultrasound images that Dr. Harrison had pointed out to me: A 13-week fetus before, an empty screen after. And they didn't like the comment from another patient, in for her fourth abortion, who said the procedure was 'no big stress' — and easier than remembering to take her birth-control pills. Abortion opponents were livid that I had quoted Dr. Harrison as saying that abortion gives these women new life. They felt he had manipulated religious terminology: After being relieved of an unwanted pregnancy, he said, his patients often feel as though they have been 'born again.' One reader told me that my piece promoted abortion by making it seem too easy, too routine, 'like just another day in the office.' The criticism — as well as positive responses from both sides —

George Neumayr is California Political Review's *press critic.*

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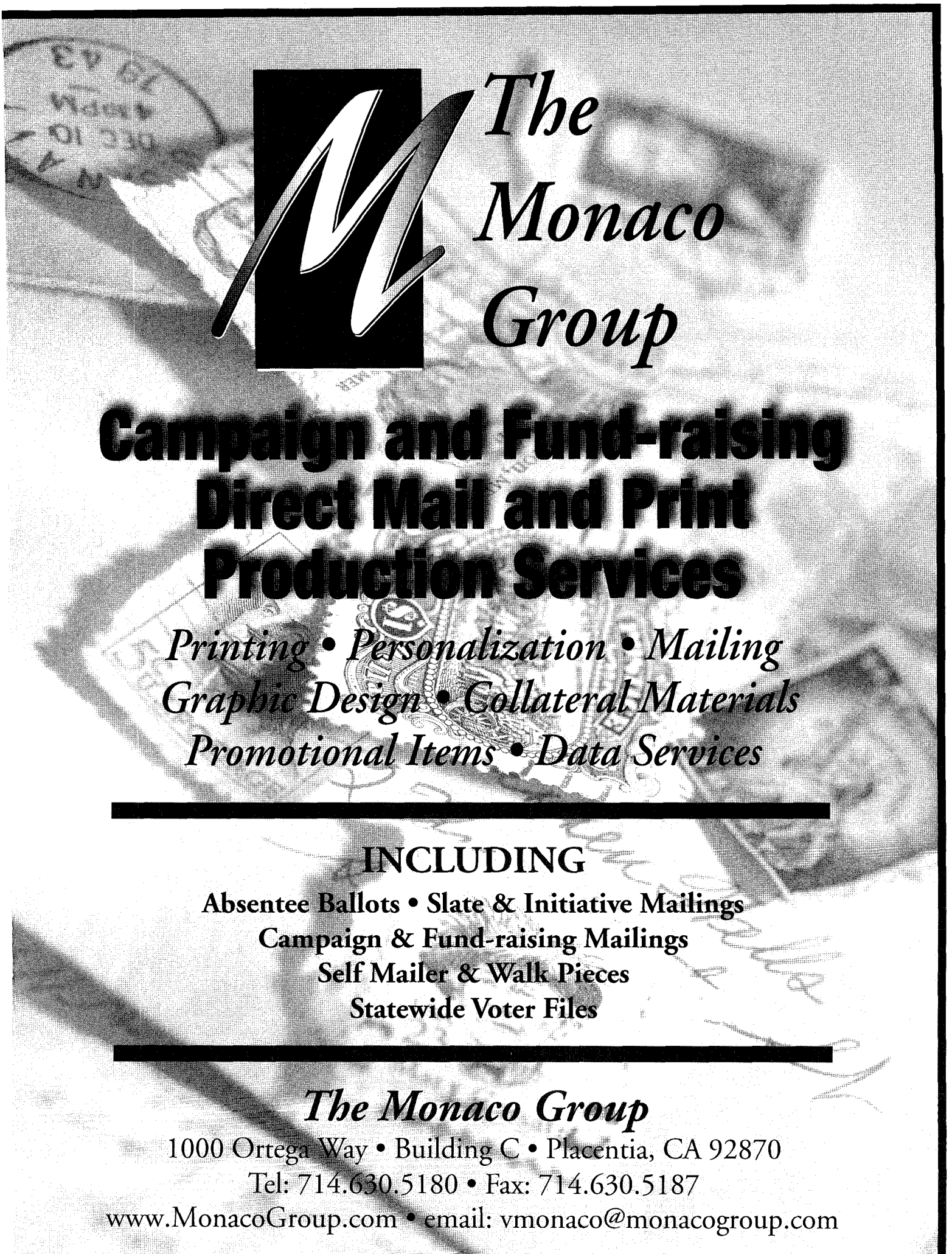
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made me realize I had been naïve to think the story could be a window; it was actually more like a mirror: People read into it what they wanted, filtering it through their preconceptions. In that sense, the story failed. Yet it did provoke debate and prompt some reader reflection. On such a polarizing topic, that may be the best we reporters can hope for."

SIMON'S STORY generated another reaction from pro-lifers that she didn't mention, namely: Why didn't she note that this Fayetteville abortionist has long claimed to be friends with Bill and Hillary Clinton and claims to have served as Hillary's doctor around the time he started up his abortion practice? LifeSiteNews.com raised this issue shortly after Simon's story appeared, reporting that William Harrison has written that "I have known Bill and Hillary Clinton personally since they both moved to Fayetteville to teach at the University of Arkansas Law School in the early '70s. I met Hillary first as her physician and she soon introduced me to her then-boyfriend, Bill."

⚜ ⚜ ⚜

Writer Tom Bethell, a media fellow at Stanford's Hoover Institution, lowers the boom on dubious science reporters and scientists in his trenchant and much-needed recently released book, *The Politically Incorrect Guide to Science.* Bethell notes that supposedly skeptical reporters often serve as conveyor belts for scientific fraud and wobbly theories. Though they usually make a great show of questioning authority, reporters do frighteningly little of that when government scientists and "experts" appear before them to hawk politically correct science.

"Senior officials from the National Institutes of Health have been known to call television producers and tell them that certain views, if publicized, could endanger the health of the nation," writes Bethell. "Journalists sometimes think it's downright unsafe to

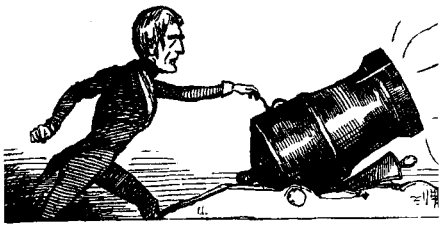
WHAT YOU HAVEN'T BEEN TOLD ABOUT GUN CONTROL

By SAM PAREDES

America has a grand tradition of representative government: of serious people assembling to find common ground within all shades of opinion, to thrash out our differences not with brute force like dark age Neanderthals, but thoughtfully, with devotion to truth in service to the common good. Witness it first hand. Sit face to face with members of our Legislature. See high principle applied daily in a feast of reason and flow of soul.

Well, not exactly. Actually, I have tried something less ambitious — merely raising the topic of the Founding Fathers' foresight in including in the Constitution the Second Amendment's guarantee of our right to keep and bear arms as a daunting obstacle to tyranny. I have seen the august members' eyes all but glaze over when I mention the Constitution. They call it a "living, breathing document," and they treat it as a thing long dead: explaining that our Founding Fathers have little relevance "today," that "today's" elected officials "know better" — in their humility, a humility that nothing short of profound ignorance can achieve, they wearily take to be self-evident their superiority of mind over those children of a bygone era: Washington, Franklin, Jefferson, Hamilton, Madison.

But our Founding Fathers knew the threat of tyranny is never really removed, so much so that both Federalists and anti-Federalists supported the protection of unfettered ownership and use of firearms in the U.S. Constitution.



I know that many past and present legislators have an undying love for our Founders and of the big three — the Declaration of Independence, the Constitution, and the Bill of Rights — but often as no more than artifacts of a dead past, not "living, breathing" guides for "today." It's as if America's founding were a painting on the wall. Suggestions that the concerns that shaped it hold more than symbolic relevance "today" provoke a reaction as uncomprehending, appalled, even panic-stricken, as if Washington's or Franklin's painted likenesses came suddenly to life, walked out of their portrait and into the room talking of freedom and slavery.

If our children are to know American peace and freedom, we will have to do better than that. CPR

Sam Paredes is executive director of Gun Owners of California. For more information go to www.gunownersca.com.

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question the experts. Actually, it's unsafe not to."

Not long after Bethell's book was released came vivid confirmation of its points from South Korea. The cloning claims of South Korean scientists — claims the American media had trumpeted as evidence of a glorious Stem Cell Future that a reactionary America under George Bush refused to join — turned out to be bogus. Yet the same journalists who uncritically treated this fraud as ironclad proof of scientific progress offered no apologies that I saw. They expressed no regret at having gratuitously bashed the president for possessing the circumspection and skepticism they lack. In many journalistic quarters, a profound silence greeted news the South Korean government had discovered that all the stem cell lines from the alleged clones didn't exist. The scant coverage that did follow this report tended to be muted and largely ignored the media's previous glowing embrace of the claim.

The media treat doctors and scientists as a "white-coated priesthood," writes Bethell. "If only the skepticism with which they view the uniformed officers of the Department of Defense could be extended to the uniformed officers of the Public Health Service."

Scientists have long known that sympathetic, credulous liberal reporters are useful dupes for any new alarmist claim modern science wishes to peddle. The key for these scientists is to make their declarations as dogmatic as possible while concealing their own doubts, and the media will swallow their claims whole.

BETHELL QUOTES Stanford climatologist Stephen Schneider, winner of a MacArthur Fellow "genius" award in 1992, saying: "We have to offer up scary scenarios, make simplified, dramatic statements, and make little of any doubts we might have. This 'double ethical bind' we frequently find ourselves in cannot be solved by any formula. Each of us has to decide what the right balance is between being effective and being honest. I hope that means being both."

It usually doesn't. But that's okay, some environmentalists reason, since bad science can serve good ends. As Christine Steward, former Canadian Minister of the Environment, says in another revealing quote culled in the book, "No matter if the science is all phony, there are collateral environmental benefits ... Climate change [provides] the greatest chance to bring about justice and equality in the world." CPR

Those in power over us

The army corps' 'navigable waters' canard

The federal high court can end a notorious abuse of both private property and the Constitution.

M. DAVID STIRLING

THE FEDERAL bureaucracy's notorious abuse of power under the Clean Water Act (CWA) to deprive property owners use of their own land may finally be reigned in. On February 21 in the United States Supreme Court, Pacific Legal Foundation attorney M. Reed Hopper directly challenged the federal government's long-standing intentional misinterpretation of CWA, which mandates federal regulatory jurisdiction over "wetlands" "adjacent" to "navigable waters" (*i.e.*, a river, lake, or stream), as an excuse to send government agents to harass private property owners attempting to use their own land whenever and wherever any water is present in any quantity, even temporary puddles or ponds from seasonal precipitation. PLF is represent-

Mr. Stirling is vice president of Pacific Legal Foundation (www.pacificlegal.org), a public interest legal organization that has defended private property rights and challenged environmental excesses in the courts for 33 years. He may be reached at mds@pacificlegal.org.

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ing 70-year-old John Rapanos (*John A. Rapanos et al v. United States of America),* whose case has become one of the most important constitutional fights to come before the court in several years.*

ARTICLE I, SECTION VIII, of the U.S. Constitution specifically empowers Congress "to regulate Commerce ... among the several States ...." The CWA's "navigable waters" provisions were legally justified under this so-called "commerce clause." It was reasoned that private land *adjacent* to "navigable waters" — waters on which federally-regulatable interstate commerce is *probably* proceeding — could, by a slight stretch of the imagination, also fall under federal jurisdiction as possibly somehow involved in or affecting the commerce between states.

As questionable as this reasoning is, it clearly requires that actually "navigable" waters be somewhere nearby before it can be applied to allow federal regulation of private land. Without navigability, even the thin connection to "commerce" that Congress envisioned disappears.

But the federal bureaucrats of the Army Corps of Engineers (who are charged with CWA enforcement) haven't let this critical point bother them. Over the years since CWA's enactment, they have increasingly treated any wet land anywhere as "wetlands" under CWA and demanded private property owners apply for highly expensive and cumbersome permits (which the Corps is loathe to grant) before using the land that *they,* not the government, bought and own.

This abuse threatens not only private property but America's constitutional system. One of the unique features of the U.S. Constitution is its balancing of powers between the federal government and the states, known as federalism. Except for that of slavery, no question occupied the Constitution's framers more than how to achieve that balance. They did so by granting to the federal government those powers essential to the effective administration of a *national* government, while reserving to the states those powers not specifically granted to the federal government. Under that carefully balanced design, Congress's lawmaking authority is limited to those areas in which the Constitution specifically empowers Congress to act, such as the "Commerce Clause." The Founding Fathers' deep concern in crafting these provisions has been amply justified by Congress itself, and by the federal regulatory agencies Congress has created, through their repeated misuse of the "Commerce Clause" to expand federal control into areas the framers intended to reserve as domains of the states, local government, or private citizens. Given all that is at stake, the ghosts of James Madison and Thomas Jefferson may well have been in attendance at the recent Supreme Court arguments in *Rapanos,* along with the two new justices added to the court since this question last fell under its consideration.

THE STORY began in the 1950s when a businessman, John Rapanos — a productive, taxpaying citizen with no criminal record — purchased 175 acres of farm land in Michigan. In 1988 and '89, he began preparing the property for sale as a commercial development by having tree stumps pulled out and moving sand around. Before long, the Army Corps of Engineers sent agents out to the property. Using its own expanded, non-traditional definition of "wetlands," the Corps ac-

*In 2002, the Supreme Court agreed to hear the case of a California farmer whose property rights dispute with the federal government raised issues similar to those in *Rapanos.* That case, however, ended in an inconclusive 4-4 tie vote after one of the nine justices recused himself late in the process. (*See* "Steinbeck, come home," M. David Stirling, *CPR,* Sept./Oct. 2002.)

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cused Mr. Rapanos of filling those wetlands without the required permit. Mr. Rapanos objected strenuously to this Corps-created definition of "wetlands."

That was a big mistake. In the eyes of this increasingly intrusive bureaucracy, private property is a quaint, outworn institution that must give way to society's collective good — as defined by the bureaucrats. Again confirming Lord Acton's dictum, they also seem to think resistance to their dictatorial arrogance is worse than the "violations" of the law their agency ostensibly exists to enforce.

"Sure, I filled it," Mr. Rapanos says, "but I didn't fill wetlands. When the government tells you to cease and desist when you're not breaking the law, what do you do if you're an American? I'm innocent. I'm not going to be pushed over if I'm innocent." That's not the compliant attitude these bureaucrats expect from their citizenry. One federal wetlands coordinator admitted as much when she said that most property owners choose to "work with us, instead of arguing. Mr. Rapanos was the exception to that rule." The U.S. Justice Department filed criminal charges against Rapanos, and, for the past 18 years, he has fought through the legal system to preserve his right to reasonable use of his property. *The Detroit News* said it best: "John Rapanos' story is a chilling example of what can happen when government loses all respect for property rights and starts looking at private land as a community asset."

Because Rapanos' failure the apply for a fill permit was at least a technical violation of the CWA, he was convicted by a federal jury. Unimpressed with the Justice Department's case, trial Judge Lawrence Zatkoff, set aside the conviction. But the federal appeals court, at the Justice Department's urging, reversed, and ordered the judge to sentence Rapanos. At the sentencing hearing, Judge Zatkoff demonstrated his disgust with the government's case with this bench comment:

> The case that I just sentenced prior to this case ... was the case of Mr. Gonzales, who was a person selling dope on the streets of the United States. He is an illegal person here. He's a citizen of Cuba, not an American citizen. He has a prior criminal record .... So here we have a person who comes to the United States and commits crimes of selling dope and the government asks me to put him in prison for ten months. And then we have an American citizen who buys land, pays for it with his own money, and he moves some sand from one end to the other and the government wants me to give him sixty-three months [more than five years] in prison. Now, if that isn't our system gone crazy, I don't know what is. And I'm not going to do it. (*Rapanos,* 235 F.3d at 259-60)

'Sure, I filled it,' Mr. Rapanos says, 'but I didn't fill wetlands. When the government tells you to cease and desist when you're not breaking the law, what do you do if you're an American?'

The Justice Department again appealed and the federal appellate court again ordered Judge Zatkoff to impose sentence on Rapanos. Even after Rapanos was sentenced to, and performed, 200 hours of community service, served three years probation, and paid $185,000 in fines, the Justice Department insisted he serve jail time. Finally, after the U.S. Supreme Court threw out the federal criminal sentencing guidelines, Judge Zatkoff was able to end the criminal case without giving Rapanos jail time.

PERHAPS AFRAID that people might see this result as a Rapanos victory and an indication that they could similarly insist on their rights, the government filed a civil action against Mr. Rapanos, again using its self-made definition of wetlands, but this time seeking a fine of $10 million, forfeiture of 81 acres of his property, and $3 million in "mitigation fees."

As he had from the beginning, Mr. Rapanos argued that under CWA and the Supreme Court's most recent decision on the subject (*Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers,* 531 U.S. 159 (2001)), only wetlands "adjacent" to "navigable waters," *i.e.,* a river, lake, or stream, were subject to federal jurisdiction. Because the nearest navigable water to his property was 20 miles away, he argued that the Army Corps had no regulatory jurisdiction over it.

The Army Corps argued that it is better able to protect the nation's waters if its jurisdiction extends to any land where even a few drops of accumulated water might conceivably reach navigable waters through hydrological seepage, no matter how remote. Both the trial court (not Judge Zatkoff) and the federal appellate court ruled for the government. At this stage, PLF

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took over direct representation of Mr. Rapanos, and its petition urging the Supreme Court to hear his case was granted. (Of some 8,000 such petitions the High Court receives annually, it agrees to hear only about 1 percent.)

Mr. Rapanos' case is but one in a parade of horror stories of draconian wetlands enforcement around the country. While the regulatory bureaucracy uses vast taxpayer-provided resources to coerce landowners into compliance with unilateral, arbitrary, and scientifically dubious wetlands regulations, the diminishing class of property owners who would resist such heavy-handedness must spend millions of dollars in attorney fees, fines, and penalties, and even risk ultimate economic destruction and imprisonment – just for the "privilege" of fighting for their rights.

PLF attorney M. Reed Hopper argued that if federal bureaucrats can legally regulate Mr. Rapanos' private property when no legitimate nexus exists to Congress's commerce powers, the breaks will be off for federal abuse of its citizens through violations of their constitutionally-protected rights. Now you know why the far left goes apoplectic over Supreme Court nominees who actually respect the rule of law. CPR

The Law

California's quota commandos won't give up

With Lockyer's connivance, left-wing local governments continue to promote racism.

HAROLD JOHNSON

WHAT A difference 10 years doesn't make. A decade ago, in 1996, a fierce fight raged over the "California Civil Rights Initiative" — Proposition 209 — a ballot initiative to forbid race preferences in state and local government.

Today, the fight to implement Proposition 209's vision of fairness and equal treatment goes on. However, the battle has shifted to the courtroom, as the measure's supporters try to get public officials to obey the law.

In some parts of the Golden State you could be forgiven for not realizing that Proposition 209 triumphed at the polls. Even though its ban on racially-skewed initiatives in contracts, hiring, and schooling is now part of the state constitution, playing favorites by color remains official policy in some of California's largest bureaucracies. The past half decade has offered a protracted tutorial in the left's disdain for law and democracy when they collide with ideology.

In one outpost of defiance — San Francisco — officials were successful for years in derailing court challenges to their systematic discrimination against white males in awarding public-works contracts. The city's scheme gives a 10 percent "bid discount" to contracting firms owned by minorities or women. In other words, the city pretends that a bid from a black, Latino, or woman contractor is 10 percent below its true price. Meanwhile, bids from men who happen to be white are reviewed at full cost.

Finally, last year, a trial court struck down the policy, but San Francisco still won't give up. It has taken its fight to continue race preferences to the California Court of Appeal, where oral argument is expected to be scheduled soon. The City is also appealing a trial court ruling against its racially-skewed method of hiring and promoting employees at its airport, after a trial court found that policy, too, in violation of law.

The Bay Area isn't the only place where politicians

CPR *Contributing Editor Harold Johnson is an attorney with the Pacific Legal Foundation in Sacramento.*

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and bureaucrats close their eyes to their legal duty to be color blind. Los Angeles County has published a "goals and timetables" schedule for hiring nonwhites and women on county contracts — ("Goals for minority participation for each trade: 28.3 percent; goals for female participation for each trade: 6.9 percent") — so managers are on notice that their personnel decisions are monitored for racial and sexual correctness.

PUBLIC EDUCATION is not immune from violations of Prop. 209. School districts in Los Angeles and Berkeley have used race as a factor in deciding which students can attend magnet schools. The Los Angeles Unified School District also uses race in making teacher assignments. Jim Friery, a Van Nuys High School physical-education teacher, discovered this policy when he tried to apply for a position at a nearby magnet school three years ago. He learned that he wasn't eligible because he's white and the school already had enough white teachers. "You're of the wrong ethnic origin," his principal informed him. Friery headed to court, but Federal Judge Nora Manella, a former U.S. attorney for Los Angeles under the Clinton Administration, didn't see what he was fussing about. Racially-based restrictions on teacher transfers are perfectly permissible, she ruled, if the aim is to "balance" the races at individual schools.

Besides, she added, even if Friery was denied a new job merely because of his color, he wasn't really harmed because his current job pays as much. The echo of "separate but equal" in her words apparently escaped the judge's notice.

Several state courts, including the California Supreme Court, have applied Prop. 209 forcefully to strike down government programs that stacked the deck based on race. But these rulings only make it more astonishing that bald-faced defiance of Prop. 209 continues in some major programs and bureaucracies.

It seems the perpetrators have nothing to fear from California's top law-enforcer. Democrat Attorney General Bill Lockyer has not filed a single enforcement action against a Prop. 209 scofflaw. In fact, he personally argued before the state Supreme Court in favor of San Jose's racially-biased contracting program (the court struck it down anyway), and his spokesman told the *San Francisco Chronicle* last year that the AG's office was still using racial and gender "goals" in hiring and promotion.

Little surprise, then, that Lockyer hasn't questioned the University of California's suspicious new formula for sifting applications from high-school seniors. This "comprehensive" review of applicants to UC's individual campuses downplays academic performance while stressing subjective "life challenges" such as poverty, being a shooting victim, or being raised by a single parent. In unguarded moments, more than one UC official has hinted that the aim is to bring back quotas — in camouflage.

After one procedural victory by San Francisco in its drive to defy Prop. 209, a giddy response came from "Americans for a Fair Chance" (AFC), an alliance that includes the NAACP Legal Defense and Educational Fund, Inc., the Mexican American Legal Defense and Educational Fund, the Lawyers Committee for Civil Rights Under Law, and the National Women's Law Center. "[A]ffirmative action — even in California — is alive and well," crowed the press release.

CLEARLY, FOR Prop. 209's supporters, the fight for compliance — the battle to make sure no one is treated less equally based on sex or skin color — will not end any time soon. CPR

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Business Trends

Mexican election results will reverberate in California

July's presidential voting is crucial to Mexico's continued economic growth, and to immigration.

BILL MUNDELL

Mexico's July 2, 2006, presidential elections are of fundamental importance for Mexicans because they represent an opportunity to consolidate a democracy. But they are *also* critically important to Californians because, until Mexico *does* consolidate its democracy, Mexicans will continue to flee over its borders, fence or no fence.

After 71 uninterrupted years of one-party rule under the Institutional Revolutionary Party (PRI), Mexico finally had fair elections in 2000, electing Vicente Fox and the National Action Party (PAN) to the presidency. Fox's election was a watershed event in the development of Mexican democracy, although that development remains incomplete. True representative democracy in Mexico will emerge only with the establishment of a viable middle class. And today a cozy alliance between the Mexican business elite and the political parties in power is committed to blocking that.

Breaking up this alliance will require a true groundswell of support among the Mexican people for genuine economic reform. The people have ample grounds for demanding such reform. According to the Mexican Social Security System, during the more than five years the current Mexican president has held office, only 539,757 formal jobs were created in a country of more than 107 million people. (In California, by comparison, with a state population of between 36 and 37 million, 187,900 new jobs were reportedly created just in the 18 months between summer 2004 and the end of last year — and analysts called this a "sluggish" rate of job growth for the Golden State.)

The cause of this anemic employment situation is not hard to find. Mexican businesses face a dizzying array of regulations that cripple job creation. It costs a firm an average of almost 20 months of wages to fire a worker, placing it in the bottom 20 percent of the world in labor flexibility according to the World

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Bill Mundell is chairman and chief executive officer of Vidyah, Inc., a leading private U.S. educational organization, and chairman of International Knowledge Measurement (IKM), a knowledge assessment company. Concerned about disenfranchised California voters in recent elections, Mr. Mundell formed Californians For Fair Redistricting in 2004 to promote redistricting reform for California.

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Bank. Under this type of regime, the risk associated with starting a business is often prohibitive. Even worse, Mexico ranks in the bottom 30 percent of the world in terms of "contract enforcement," a fundamental building block of any economy. Coupled with its punishing tax system (which catapults wage-earners making just $25,000 into the highest marginal tax rate), it is little wonder that a record number of Mexicans seek economic opportunities outside of their country through documented and undocumented means of migration.

A natural constituency for this reform is the community of expatriate Mexicans living in the United States who "invest" $15 billion a year in remittances back to their country in attempting to fill the employment gap created by bad economic policies in Mexico. It just so happens that these expatriates can finally vote in the Mexican elections. The July elections thus offer a unique window to let Mexicans living here transform Mexico for the better. The scandal is that a cumbersome voter registration system set up by the Mexican government for its citizens abroad inhibits voter participation and true democratic growth in Mexico. Of all the requirements involved, the most detrimental has been a registration deadline of almost seven full months before the actual election. To put that in perspective, Iraqis living in this country had until election day itself to register to vote in their nation's December election.

A lengthy gap between registration and voting is difficult enough for a voter who lives in the country. For those abroad, the gap effectively cuts voters out of the process before the process actually begin. Other cumbersome requirements: complicated paper work, additional fees for postage, and an ID requirement that can only be acquired in Mexico, exacerbate the situation.

A SYSTEM THAT protects against voter fraud or abuse is undoubtedly laudable as long as it continues to protect the integrity of the democratic process. But when the procedural requirements of such a system inhibit voter participation, then the system should be fixed. It is worth noting that when the Mexican government contemplated legislation supporting voting abroad, a more expansive bill that provided for thousands of polling centers and voter registration facilities across the United States was rejected by the Mexican Senate in favor of the current system. Members of the Mexican Senate should have been more visionary when creating the plan for voting abroad.

The requirements have clearly taken a toll on registration numbers. Only 25,000 people are now registered out of a potential total number of eligible Mexican voters in this country of 4.2 million. These voters are politically conscious, economically motivated stakeholders who are more likely to vote than not. Although they have left Mexico, their large financial stake in their country keeps them closely tied to it and they know full well the benefits of a free market economy. Maximum participation in the Mexican election by these U.S. voters would have been a significant development toward reform. They could have decided the outcome of what most characterize as a close, three-way presidential race between President Fox's center right PAN, the left-leaning PRI, and the center-left Institutional Revolutionary Party (PRD).

While all three party's presidential candidates pledge to improve the Mexican economy and attract international investment, only PAN's Felipe Calderon speaks of the need to create a more competitive economy through more flexible labor laws, fundamental reform of the tax system, strengthening of the rule of

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law, and promoting joint private ventures in the oil industry. (A whopping 80 percent of Mexico's oil reserves cannot be explored due to government monopoly PEMEX's lack of investment in new technology.)

Implementing Calderon's policies would contribute significantly to developing the country's free market as a prerequisite to growth. Those policies would resonate with forward-thinking Mexicans living here who appreciate the need for development. It is unfortunate that ill-conceived voter registration procedures have kept their numbers so small for this election, but look for these U.S.-based voters to play a growing role, and contribute an increasingly influential voice, in their national politics as Mexico continues to move into the 21st century. This trend toward economic freedom and growth is developing with agonizing slowness, but it is moving in the right direction for Mexico ... and for California. CPR

CORRESPONDENCE

(Continued from page 2)

kill Elmo?" I mean, how does that city take apparently well-functioning minds, one after another, and turn them to jello? People who would never have dreamed of stealing a man's watch or wallet before moving back there suddenly somehow can see nothing wrong with stealing hundreds of millions of dollars through taxation without the least hint of any morally coherent justification and spending it as though they had earned it themselves. Their moral sensibilities just seemingly evaporate. Mr. Bialosky would appear to be right: the only corrective likely to serve would be to yank out every office holder, staffer, and lobbyist and start over, and that isn't going to happen. I have no solution either. I guess I wrote this letter just to complain also. I only wish there were a secret medical lab. We could find it and clean it out and be done with it. Alas, it's evidently something much more than that.

Monica Franklin
Los Angeles

Bon voyage, Babsy

So Babsy Streisand has quit on the *Los Angeles Times!* ("The Working Press," George Neumayr, *CPR*, Jan./Feb. 2006) Lefties are like drug addicts. No matter how much they have things their own way, they are never happy.

The *Times* remains 95 percent liberal in overall content, and 100 percent on the left in the broad message it sends to the public: no one will ever perceive a hint of thoughtful variation at the paper's top levels on essential issues like abortion, marriage, gun control, judicial law-making, the danger of growing government power, the moral superiority of freedom over tyranny (as long as the tyrants are anti-American; the only bad tyrants are those who commit the sin of liking us), or anything else.

Yet it isn't enough — if even one left-wing gasbag like Robert Sheer is let go, especially if his departure coincides with a slight gesture toward balance on the op-ed pages, all H breaks loose among the elite readership.

What will they say when they have destroyed every vestige of the civilization they hate, when the last free man is enslaved, and they still aren't happy? Opps? Maybe then Babs will finally make good her threat to leave the country. Where, I wonder, will she go?

Samuel Richards
Sacramento

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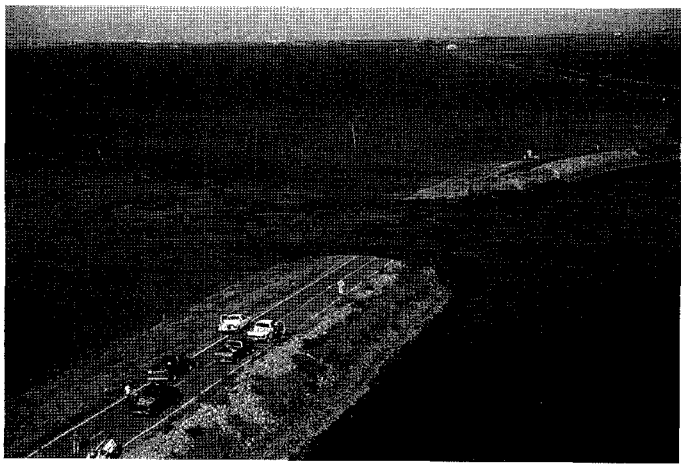
Post-Katrina sensibility



The New Orleans flood disaster at long last focused Californians' attention on our own dangerously neglected levee system. But daunting obstacles will make any 'fix' difficult.

Of bureaucrats and borrowing
by Chuck DeVore (below)

What if the levees *can't* be repaired?
by Geoffrey Vanden Heuvel (page 17)

Photo: Upper Jones Tract Levee Break in the Sacramento-San Joaquin Delta, June 3, 2004. Due mostly to environmental regulations, levee repair costs have soared from $300 per linear foot in the early 1980s to more than $5,000 per linear foot today.

Aside from the questionable wisdom of issuing $68 billion in new debt, Governor Arnold Schwarzenegger's ambitious "build it" proposals face a morass of daunting environmental and labor regulations. If they are not reformed, the rules will mean that every dollar we borrow will buy less than a quarter's worth of construction: less than $17 billion in actual infrastructure for incurring that $68 billion debt.

Consider, for instance, the governor's laudable desire to repair California's aging levee system. The Sacramento-San Joaquin river system alone contains about 1,600 miles of levees (1,100 miles of which are in the critical Sacramento-San Joaquin Delta region). The cost of levee repair has ballooned from $300 per linear foot in the early 1980s to more than $5,000 per linear foot today. Why? Federal and state environmental laws. If giant garter snakes live on a levee, for example, repair work may be prohibited seven months out of the year. "Vegetation mitigation" requirements can cause six year delays, lead to massive cost overruns, and threaten lives as well as property. When, for instance, a levee along the Feather River was found to need repair, the U.S. Fish and Wildlife Service discovered 43 elderberry bushes. This led to the counting of 1,538 elderberry stems that had to be planted elsewhere as mitigation. To comply with the regulations, 76 acres of a nearby peach grove had to be purchased so that 1,538 elderberries could be planted on the property. The mitigation cost was $1.9 million,

Chuck DeVore represents the 70th Assembly District in Orange County. He also serves as a major in the California Army National Guard.

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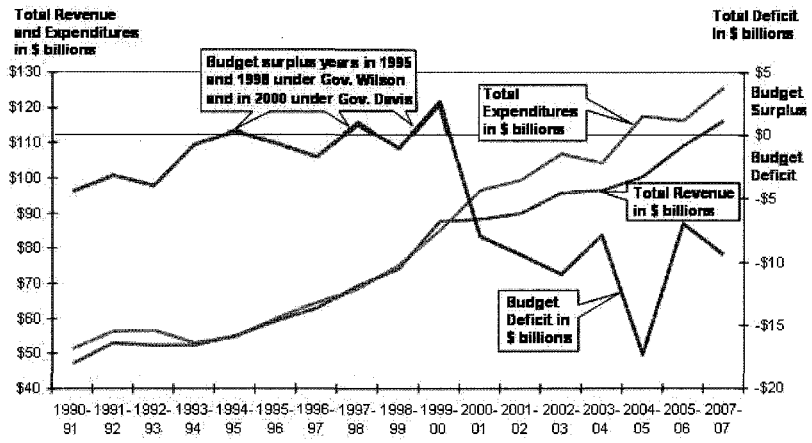

or $44,000 for each mature bush. In the end, environmental mitigation on the levee cost more than $10 million. Actual repairs cost about $4 million. But this absurdity was nothing compared to the human cost of imbecilic over-regulation: just after the mitigation project was completed in 1997, and before the work on the levee was to begin, the levee broke, killing three people and flooding 25 square miles. By the way, the flood nearly destroyed the "mitigation project" as well.

The governor's proposals for road construction will have to contend with an equally surreal environmental and labor regulatory regime. Without significant reform, expect existing rules to bring massively ballooned costs, endless delays, and far less infrastructure restoration than so large an investment would create in a rational political environment. Rationality, however, is about the rarest commodity to be found in Sacramento, as a look into the political and policy details surrounding the governor's infrastructure plan shows time and again.

The Budget

With $5.2 billion in unanticipated revenue swelling state coffers and "Gridlock" in danger of replacing "Eureka!" as California's state motto, Governor Arnold Schwarzenegger is proposing increased spending on health, education, and $68 billion in bonds over 10 years to build roads, levees, schools, prisons, and courthouses.

In response to the unveiling of the governor's new budget, state Senator Tom McClintock (R-Thousand Oaks) said in a January 10 statement: "In the last three years, combined population and inflation will have grown 16 percent; revenues 19 percent; spending 25 percent. For the budget year, combined population and inflation will increase 4 percent; revenues 5 percent; spending 9 percent. Revenues continue to outpace inflation and population; spending continues to outpace revenues." (See the accompanying chart for a visual overview of California's recent history of spending, revenue, and deficits.)

The proposed budget can be criticized as a no-pain, election-year budget designed to get Schwarzenegger safely past November 2006. But, on a positive note, the budget contains no new taxes, causing Assemblyman Roger Niello (R-Fair Oaks) to note, "The results of holding the line against new taxes are in, and are reflected in the increased revenues to the state .... The Legislature now needs to craft a budget that handles these new revenues in a responsible manner and continues work on the structural deficit."

Given legislative realities, the tough fiscal discipline that Mr. Niello references will emanate only from the Assembly Republican Caucus if it emanates at all. Assembly Republicans enjoy leverage on this issue because six of them will have to join all 48 Democrats to reach the two-thirds vote threshold to pass a budget.

The Bonds

Benjamin Franklin famously observed that "nothing in life is certain except death and taxes." Were he in California today, with all the hype from embryonic stem-cell researchers and quack cloners eroding the public's belief in the inevitability of death, he might have instead opined, "Nothing in life is certain except *debt* and taxes."

To the rest of the nation (Washington, D.C., excluded), the governor's proposed $68 billion in new debt for capital projects, especially roads and levees, seems like a lot of money. But Democrat state Treasurer Phil Angelides dismisses the plan as inadequate. "We need to do more than we are doing ...," he said. Angelides argues Schwarzenegger's plan increases bond debt at a slower pace than it grew by during the past five years, implying it actually represents a step toward over-cautiousness in borrowing. Ironically, Angelides has complained in the past that Schwarzenegger was borrowing too much. But his reaction now to the new proposal — as befits, perhaps, a candidate to replace Schwarzenegger as governor — is to say in effect: "I see your billion dollars and I raise you two."

The governor says his plan will keep California's debt load below 6 percent. What it cannot control is

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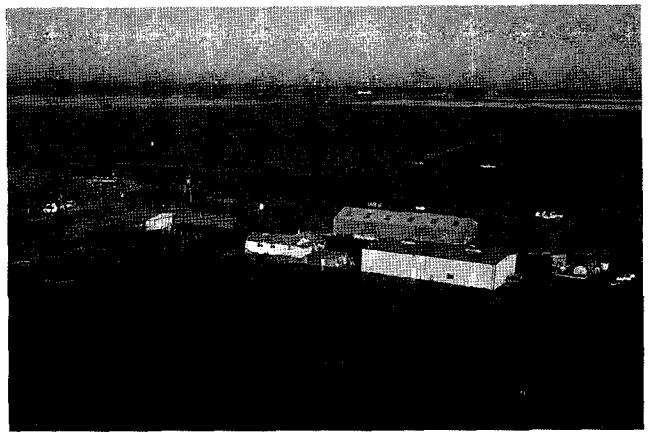
California's penchant for issuing bonds for almost anything, such as the $3 billion in bonds authorized in 2004 for stem-cell research. Nor does his plan take into account the $37 billion in bonds already authorized but not yet sold.

Immediately after the governor announced his series of "build it" proposals, Senate Republicans introduced the bills required to place his bonds before the voters. Assembly Republicans, on the other hand, led by Kevin McCarthy (R-Bakersfield) and concerned about California's burgeoning debt, countered with a "pay as you go" approach to building roads, levees, and other infrastructure. First, Republicans proposed Assembly Constitutional Amendment 27 which would dedicate 1 percent of the General Fund for statewide projects starting with the '07-'08 budget. After that, when annual budget spending grows by $5 billion or more, an additional one-half of 1 percent of the General Fund, up to a maximum of $750 million, would be spent on top of the previous year's set-aside for capital projects. The proposal, which protects Prop. 98 education spending guarantees, could finance about half of Schwarzenegger's construction proposals over the next 10 years. It would thus greatly diminish the need for another $68 billion in new debt. "By responsibly setting aside a small portion of the budget each year solely for infrastructure," McCarthy said, "we will be able to meet all of our state's complex needs without incurring a single dime of interest."

All this debt comes at a high price to California taxpayers, according to conservative budget experts McClintock and Jon Coupal of the Howard Jarvis Taxpayers Association. "Bonds are seductive," McClintock said recently. "They promise immediate gratification but they conceal a heavy price. They are certainly the most expensive way to finance projects, costing two dollars to retire every dollar of debt. Moreover, the state's borrowing capacity is finite, requiring careful attention to priorities, since debt once issued cannot be rescinded — only repaid." Coupal cautions that bonds "are almost always an inviolable long-term obligation. Those who purchase bonds are guaranteed repayment by the 'Impairment Clause' of the U.S. Constitution."

Both experts warn that excessive reliance on bonds will lead to tremendous pressure to increase taxes in the future when the debt comes due and public agencies cannot escape their obligation to repay. Of course, warnings, especially to politicians, are destined to be ignored. After all, warnings don't vote and fiscal prudence never wins an election.



Flooded farm buildings

An encouraging note

While his plans for more bonds are fiscally questionable, the governor's initiatives to encourage private financing of building and operating roads are encouraging. Such efforts would permit the government to obtain rights-of-way for roads and allow companies to compete for the right to build and operate them as toll roads on a lease basis.

The Legislature is considering the governor's bond proposals. Since Republican votes are needed to reach the two-thirds vote threshold, some degree of reform should be possible, with elements of a "pay as you go" plan in addition to a measure of cost-saving regulatory relief. The Legislature can act as late as March to put the bonds up for a vote on the June ballot. CFR

What if the levees *can't* be repaired?

by Geoffrey Vanden Heuvel

Nearly two-thirds of Californians and millions of acres of California farmland depend to one degree or another on a water supply that must pass through the Sacramento-San Joaquin River Delta. Historically, the Delta was a tidal marsh located where the Sacramento River from the North and the San Joaquin River from the South converged on their way out to San Francisco Bay. In the late 19th century, farmers began to create islands on this marshland by constructing berms and draining the brackish water off the land into the channels created by the berms. They

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End of the road at the levee break

then began to farm the rich peat soil, irrigating the land using the fresh water from the rivers flowing through the channels they had created.

Peat soil, when it is exposed to the air, oxidizes and disappears. So islands that started out a hundred years ago at sea level, are now holes in excess of 25 feet *below* sea level. What began last century as modest earthen berms are now large earthen levees that must hold back enormous amounts of water, which is flowing some 30 feet or more above the surface of the land. The Delta levees exceed 1,100 miles in length, with almost all of them resting on unstable peat soil.

Two great water projects

The Delta is the hub of the two great water projects that supply Central and Southern California. The Central Valley Project, with water originating at Lake Shasta, and the State Water Project, with water originating at Lake Orville, both use the Sacramento River to convey water south. When it enters the Delta, the Sacramento River is on its way to the ocean through San Francisco Bay. Some of this water is diverted from the river and sent to thread its way through the Delta to pumping plants located near the town of Tracy. These plants move the water into the California Aqueduct for delivery to Central and Southern California.

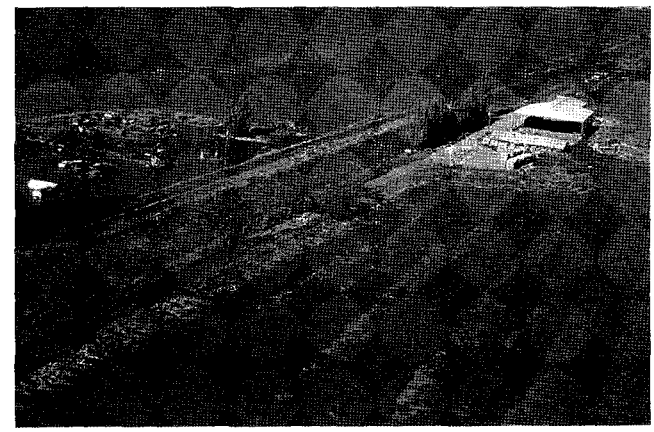
Geoffrey Vanden Heuvel, the owner/operator of J & D Star Dairy in Chino, is a Trustee and member of the Executive Committee of the Southern California Water Committee. He serves on the Chino Basin Watermaster Board, as an elected director of the Chino Basin Water Conservation District, and on the San Bernardino County Flood Control Zone 1 Advisory Committee. In 1994, he founded the Delta Restoration Coalition, a statewide group dedicated to achieving a long-term fix for the Sacramento-San Joaquin River Delta.

The engineers who designed these water projects decades ago knew the vulnerability of the Delta levees. So the original design plans included the construction of a 40-mile canal around the Delta in stable soil to insure that, in the event of a major failure in the Delta, water could still be delivered. But, as we all know, that "peripheral canal" was never built. It was not built right away, decades ago, because the cost to construct the Shasta and Orville Dams and the 400-mile-long California Aqueduct, together with all the water works associated with this huge effort, consumed most of the project's available funds. The plan was to use the delta channels on a temporary, interim basis to convey the water until additional funding allowed the permanent canal to be built.

In 1982, the Legislature finally authorized the building of the peripheral canal. But then a variety of disparate interest groups banded together to referenda and kill the peripheral canal bill. They succeeded. The canal's opponents held different reasons for their position. One group disliked a ban on diverting the Eel River into the State Water Project that the Legislature added in authorizing the peripheral canal. (The Eel River was later put on the federal Wild and Scenic River list, which prohibits its being dammed).

Anti-people environmentalists opposed the canal because they object to any water diversion projects that support population and economic growth.

Northern Californians opposed the canal because they thought the physical constraints of forcing the water through the Delta would limit the amount of water Southern California could take from them. And the Delta farmers opposed the canal because they figured as long as Southern California depended on the integrity of the Delta levees for their water supply, Southern California would have to keep spending the



High waters for farmers

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billions of dollars necessary to maintain the fragile levees and fix them when they fail.

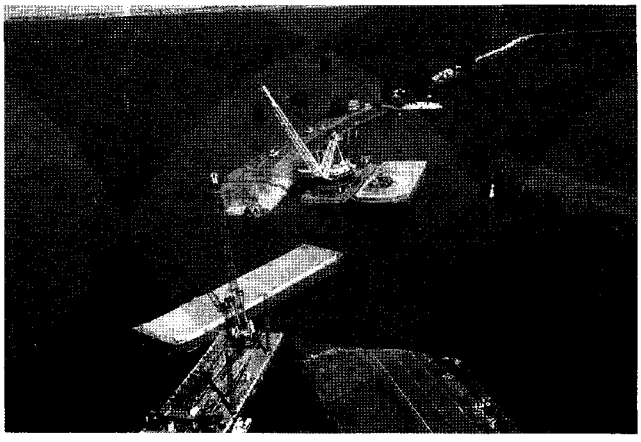
Post-Katrina awareness

Enter Katrina and a recent study by Dr. Jeffrey Mount of UC Davis and Dr. Robert Twiss of UC Berkeley.* Hurricane Katrina and the resulting collapse of the New Orleans levees focused renewed attention on the vulnerability of the California Delta levees. And the Mount/Twiss study points out that, by the year 2050, the chances are two-in-three for multiple, simultaneous levee failures in the Delta due either to flooding or earthquake. When levees fail in the Delta, water rushes into the "islands" (that are really holes) which then become lakes. Multiple, simultaneous levee failures would set off a domino effect that could submerge large areas of the Delta.

Governor Arnold Schwarzenegger proposes borrowing billions of dollars to shore up California's water delivery system. Many people call for spending those billions to "fix the Delta." But, in reality, the Delta cannot be fixed. A levee's strength is equal only to its weakest section. It would be physically impossible to "fix" all 1,100 miles of the California Delta levee system. In addition, Delta "island" farmland soil continues to subside. According to Mount/Twiss, "During the past 100 years, farming activity in the Delta has resulted in the loss of approximately 2.5 billion cubic meters of soil." They estimate that current Delta farming results in the loss of an additional seven million cubic meters per year. That works out to a 3-to-4 centimeter drop in land surface per year. Spending billions of dollars trying to shore up the Delta levees will not prevent a catastrophic failure. At some point, the system will fail no matter what we do.

What is to be done?

So if "fixing the Delta" is not possible, what should be done? First, immediate concerns should be addressed: Among the most strategic and most vulnerable Delta "islands" are some now owned by the California Department of Water Resources. They are rented out for farming and, thus, continue to deplete the soil, exacerbating the danger of a levee break. This should stop. Also, emergency preparedness measures should be taken in the Delta. This would include hardening up levees on key Delta islands, pre-positioning rock and other construction materials and equipment to enable the quickest possible response to a major levee failure.



Piecing the road together again

Second, for the long term: a peripheral canal must be constructed around the Delta. Our political leaders can show some courage, foresight, and actual capacity to lead by starting the work now or, more in the style that brings politicians the stunning reputation they hold with most people, those elected "leaders" can wait for a catastrophic system failure and disruption in the state's water supply. The terrible physical and economic damage such an event would inflict would trigger public demand that action be taken, supplying politicians the backbone to get the job done.

In the meantime, if politics won't stand for the construction of a peripheral canal, and if billions are to be spent on our water delivery system, then we should pre-position water in Central and Southern California. This would mean investing in surface and groundwater storage facilities south of the Delta and investing in conveyance facilities to move that water quickly from storage to the places it will be needed.

The Sacramento River Delta is long overdue for the serious public attention it is now finally receiving. But all this interest will go for nothing if the policies adopted fail to address the real problems threatening California's future. Earlier generations of Californians displayed great courage and vision by building a system that moved water hundreds of miles from areas of over-abundance to share it with people who had not enough. It literally made the desert bloom. We cannot do less than our part to keep alive the California dream they helped create. CPR

* *"Subsidence, Sea Level Rise, Seismicity in the Sacramento-San Joaquin Delta," by Jeffrey Mount and Robert Twiss,* San Francisco Estuary and Watershed Science, *Vol. 3, Issue 1 (March 2005) Article 5. http://repositories.cdlib.org/jmie/sfews/vol3/iss1/art5/*

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The state moves to squash an advocate for the little guy

by Tim Bolen

I AM AN advocate for change in the U.S. health care system: a system rated 72nd worldwide in quality, but number one in cost. It has recently been determined, also, to be the number one killer of Americans: ahead of heart disease and cancer. Almost all of my "crisis management" work, in North America, surrounds the unique problems of cutting-edge health care professionals, representing them before the press and public, and — when their right to practice their paradigm is challenged by public agencies — organizing their defense, and offense, and helping their legal defense teams by providing experts, etc.

In short, I've been around. I know the problems, and I know the players. Let me tell you: it's bloody on the cutting edge. I'm about to give you an example.

One of the biggest problems in the U.S. health care system is the way we

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Tim Bolen is editor and founder of The Bolen Report, *a publication chronicling the battle between "health" and "medicine." As a Crisis Management Consultant, he also directs the operations of JuriMed Public Relations & Research Group, Inc., which provides "Strategies for Government Besieged Health Professionals." He is a nationally-known expert in the field of health care politics. His work is found at http://www.bolenreport.net.*

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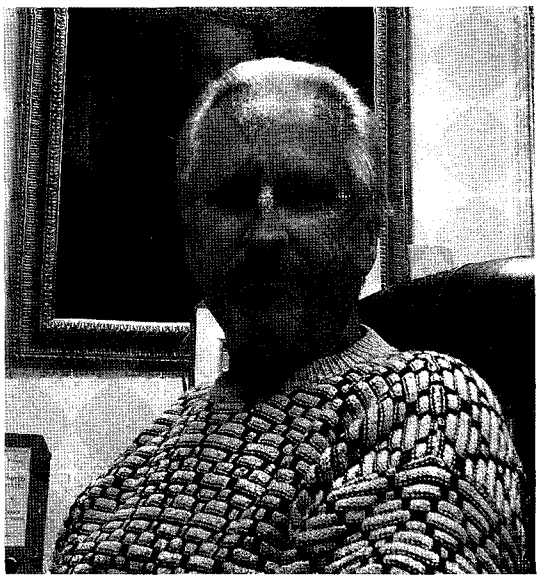
regulate it. I believe the federal Food and Drug Administration should be radically overhauled — as, under Dwight David Eisenhower, the relationship between the Defense Department and the defense industry was radically overhauled. Worse than the FDA, however, is America's administrative law system, slightly different in every state, that supposedly disciplines health care professionals. It's brutal, stupid, attracts petty despots to its ranks, costs a fortune to defend against, and has zero guidelines. The system is so bad you have lower level bureaucrats deciding what's good and bad health care, and forcing health professionals through a minefield-like hearing process. This system is one reason we're 72nd in quality: the regulators haven't a clue.



Charles Benninghoff

THE SYSTEM is not about whether the health professional did something wrong; this is a "numbers game," a game of quotas, and these public employees are expected to make their numbers. One trick is to make the "defense" so costly that a "settlement" can be reached quickly, avoiding further costs. Taking a case completely through this process, using an attorney, usually will cost the health professional in the range of $250,000 in attorney fees. Few, if any, of them can afford that these days. But suppose health professionals were provided a way to defend themselves at much lower cost by using, instead of an attorney, a qualified "lay representative." What do you think the state agency and the attorney's "association" would do?

That's what this story is about. It happened in California and here's what the players did.

About 1991, when I began doing this "crisis" work, I was introduced to the predicament afflicting many health professionals by then-lawyer Charles Benninghoff. I say "then-lawyer" because Mr. Benninghoff, at the time, was a California attorney. I was there when he was indicted by the federal government in 1998 on two charges of making a false statement to a financial institution and one charge of making a false statement to an IRS agent. Due to circumstances which I describe below, he pled guilty to the charges and resigned from the California State Bar Association in 1999.

Before that, Mr. Benninghoff and I worked on quite a few cases together involving many medical and other professionals. One such case — that of David Steenblock D.O. (Doctor of Osteopathy) — showed Mr. Benninghoff's abilities. That case, still reported on the web, continues to rankle the administrative power structure of California. In the course of a dispute over Dr. Steenblock's hyperbaric oxygen treatment for rehabilitating stroke victims, the California Osteopathic Board literally "sealed" shut his hyperbaric oxygen chambers with paper seals. Mr. Benninghoff responded by taking the entire case off to the Federal Bankruptcy Court where he succeeded in having the Osteopathic Board's action declared illegal and the seals removed. In doing so, we acquired worldwide support for Steenblock and his alternative health care methods, which, I might add, are now so mainstream that competing medical doctors advertise hyperbaric oxygen on television.

Besides his hyperbaric work for stroke rehabilitation, Steenblock is now perhaps the number one researcher in umbilical cord blood stem cell therapies. Look for his book at your favorite bookstore or online.

In another case with Benninghoff, we took on an entire water district in South Orange County. It seemed clear to us that this water district's antiquated sewage treatment plant was the source of contamination at the city of Dana Point's Doheny Beach, the spot where the sport of surfing was born. But pollution had made surfing impossible at Doheny Beach. We filed suit against the Board and worked with the media to stir up public awareness of the problem. As a result of this effort, most of the water district's board was thrown out in one election, the water district was subsequently disbanded and absorbed by a neighboring, well-managed regional agency, a $17 million bond issue was passed to pay to correct the damage, and the sewage plant was shut down permanently.

And you can now use the beach.

Then disaster struck for Benninghoff. It was the indictment I mentioned earlier. Years after some loans he had obtained were paid off, the IRS began investigating him and discovered that "he had not adequately disclosed his method of accounting he had used in his loan

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applications." While the IRS claimed there was gross overstatement of income, Benninghoff countered that in his understanding of accounting he had justification for the figures he used. He further pointed out that he had paid off the loans in question years before the IRS came knocking at his door. During the investigation, in about 1997, an IRS agent asked him about a document he had received in 1991. He said it was given to him. Actually it was sent to him by FedEx. Because of this, he was charged with three felonies and offered an all-or-nothing plea agreement by a federal prosecutor. All of this conflict coalesced into a major heart attack Benninghoff suffered while signing the plea agreement in 1999.

Along the way towards "paying his debt to society," Benninghoff sought, through a legislator's office, an answer to the question "could he, as a resigned attorney, provide representation before administrative agencies" under provisions of California's Administrative Procedure Act (APA) that permit alternatives to representation by an attorney in actions before these agencies? The California APA was rewritten in 1995 (following UCLA Professor Emeritus Michael Asimow's research) to allow non-attorneys to provide representation services. The legislator whom Benninghoff had first asked his question forwarded it to the California Legislative Counsel which assigned the question to a lawyer on its staff.

AFTER APPROXIMATELY six months of consideration, the Legislative Counsel issued its Opinion 18108 on July 17, 2001, stating that "any resigned attorney could provide lay representation in California so long as she, or he, did not claim to be a lawyer and there was no statute, regulation, or other rule against it." In the 1970s, the Workers Compensation Appeals Board (WCAB) issued a rule forbidding representation by a resigned attorney unless the resigned attorney showed the WCAB evidence of rehabilitation. No other agency has issued such a rule, so Opinion 18108 cleared the way for Benninghoff to work as a representative before any agency controlled by the state Administrative Procedure Act (unless it issued something similar to the WCAB rule).

But, Benninghoff didn't rely on Opinion 18108 alone. Before starting to work as a representative before agencies, he also obtained permission for what he intended to do from his sentencing judge and his probation officers. In addition, court filings show that his sentencing judge gave him an early termination of federal probation based upon outstanding efforts at self-rehabilitation because of his work as a representative before California and federal agencies.

Thus entitled, Benninghoff began representing people before California administrative agencies in 2001. By May 2005, he had undertaken about 400 cases. Most had settled. About 100 had gone to full hearing. Then, early last May, State Bar Counsel Bill Cox placed a call to Mr. Benninghoff's lawyer. Instead of leaving a message with the lawyer's secretary, receptionist, or any of the other lawyers in the office, Mr. Cox left a voice mail message. It was that at 9 the next morning Cox was going to court in Orange County to try to seize Benninghoff's business. When Mr. Benninghoff's attorney returned to his office from court, he discovered he had only a few hours to prepare opposition to a voluminous filing by the Bar, an early dirty trick in a series employed by our humble civil servants from the State Bar.

Such thuggish abuse of its power as a public agency is not unusual from State Bar employees. No other state licensing agency shares the California's state Bar's tradition of mixing narrow political causes into its official duties. Recall 1997, when Governor Pete Wilson vetoed funding for the Bar precisely on grounds it had not only become bloated and inefficient, but was in the habit of intruding itself into divisive political issues. As *Sacramento Bee* columnist Dan Walters reported at the time, "the State Bar, for example, supported legislation to change California's medical malpractice law — siding with a private lawyer lobby, Consumer Attorneys of California, against the CMA, the private doctor lobby." Under-handed dealings had become so much a staple of state Bar activity that then-Assemblyman Bill Morrow of Oceanside, during negotiations on a new, more restrictive law to reign in the Bar, said "I want to make sure the bill is airtight. If it was any other organization, maybe I could trust them." Eventually, the Bar was forced to curb some of its more egregious abuses. But

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dirty tricks and foul tactics die hard where they are deeply ingrained, as the rest of this article will reveal.

Benninghoff's business consisted of two elements: a state (administrative hearings) element that he started after Legislative Counsel Opinion 18108 was issued, and a federal element that consisted of representing federal prisoners from foreign countries wishing to return to their homelands to serve their sentence close to their family under the Carter Treaty. This federal "treaty" work fell under a broad international web of treaties intended to promote prisoner rehabilitation. Part of Benninghoff's reason for this aspect of his business was to "rehabilitate" himself so he could rejoin the Bar.

THIS IS where the whole case starts getting Byzantine — and a little explanation is called for. Benninghoff's "state" work included representing, as a "lay representative," medical doctors before their licensing agency, the California Medical Board. During his work before the Board from 2001 through 2005, he undertook several cases that resulted in extremely favorable outcomes for his medical clients. In one case, that of Dr. James Long, M.D., the Board was seeking license revocation where a patient suffered debilitating brain damage and was put into a vegetative state. Benninghoff proved that this tragic medical result was not his physician client's fault — as the Medical Board maintained — but the result of a certified nurse anesthetist's possibly-intentional behavior.

Instead of license revocation this physician received a public reprimand. In street language, that means that instead of the death sentence, the doc received a severe warning about supervising his helpers. Benninghoff obtained similar results in cases throughout California. His victories brought in increasing business, until Benninghoff reached a point where he was handling more agency administrative cases than anyone else in the state. Faced with this, the State Bar evidently believed it could not sit still. It didn't.

The Bar's first strike came during a hearing for a physician's assistant named Jocelyn Gordon who had erred in her practice shortly after entering the profession while being tutored by an inattentive physician. Benninghoff struggled with the Physician's Assistant Committee, a sub-agency of the Medical Board, for almost two years asking for a reasonable reprimand rather than some draconian punishment. Finally, just before Ms. Gordon's administrative hearing, the Committee brought a motion asking to disqualify Mr. Benninghoff.

Such motions are heard and ruled upon by an administrative law judge (ALJ). In this case, ALJ Sam Reyes sided with the Physician's Assistant Committee, disqualifying Benninghoff. Reyes specified his grounds for the disqualification in an "opinion" later called unenforceable as an "underground regulation" by the executive director of California's Office of Administrative Law. An "underground regulation" is a rule or policy of an agency that has the effect of a regulation, but that was not adopted pursuant to the Administrative Procedures Act. In simple terms, these "underground regulations" are manufactured by bureaucrats over-stepping their authority. They are specifically held to be illegal in California. Reyes' "opinion" disqualifying Benninghoff was so over the line, it was labeled "renegade" by California's most prominent administrative law attorney, Bob Sullivan, of Sacramento. Sullivan is the widely-respected lawyer who first identified the abusive practice of "underground regulations" by out-of-control bureaucrats like Reyes.

Reyes' 'opinion' disqualifying Benninghoff was so over the line, it was labeled 'renegade' by California's most prominent administrative law attorney, Bob Sullivan, of Sacramento.

On June 13, 2005, Office of Administrative Law Executive Director Bill Gausewitz issued his ruling holding the Reyes "opinion" unenforceable. Nonetheless, the Bar held up this renegade document as one of the original Ten Commandments in its effort to put Benninghoff out of business.

The next strike came in an MD case in San Diego involving well-known and highly-respected physician Phillip Rand. This "baby doctor," over a 55-year career, had overseen tens of thousands of deliveries. Benninghoff likes to tell the story of hiring a secretary, age 33, who, upon hearing the name Dr. Rand, shouted with glee "Oh my! Dr. Rand delivered *me*."

In the Rand case, Presiding ALJ Stevie Adler had ruled on at least two separate occasions in Benninghoff's favor after the Medical Board sought to disqualify him. At that point, the Medical Board brought in the state Bar.

To maintain their independence, California's Superior and Appellate Court judges are not allowed to be

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members of the Bar. In contrast, however, ALJs are all lawyers, and thus *must* belong to the Bar. In addition, the law forbids communications outside of official court proceedings between parties involved in a case and the case's presiding Superior Court or Court of Appeals judges for the obvious purpose of avoiding efforts to influence the judge on any grounds other than those presented in court. But the Administrative Procedure Act (APA) and the regulations issued under it allow agency employees not directly involved in a prosecution (such as Dr. Rand's) to call an administrative law judge. This provision affords an opportunity to cajole or pressure the ALJ in private to rule in the agency's favor. Is it possible that both the Bar and the Medical Board influenced Stevie Adler? Could be! In any case, after twice ruling on identical issues in Benninghoff's favor, after the Bar came in, Adler reversed himself, deciding that Benninghoff's work was now somehow illegal.

The author

ARMED WITH Reyes' renegade, and Adler's waffling, decisions, the Bar proceeded to Orange County Superior Court where it succeeded in convincing Presiding Judge Michael Brenner to allow it to seize Benninghoff's business. The order signed by Judge Brenner allowed the Bar to cart off Benninghoff's private financial information, seize his bank accounts, walk out with all of his files, computers — even his telephone numbers. All this was done in the name of protecting the public.

What did Benninghoff have with which to fight back? Quite a bit, actually. In addition to Opinion 18108, two judges (one on the bench and one retired) wrote *amicus curiae* (friend of the court) briefs, about 30 of his clients came forward with supporting declarations attesting to the fine work Benninghoff provided them along with statements that he had told them up front he was a resigned attorney, and the OAL decision declaring the Reyes Opinion invalid.

In response, Bar prosecutor Cox, in writing, threatened the sitting judge who had contributed an *amicus* brief with prosecution for practicing law without a license. How is that for subtle? Cox's rationale: since the judge was a "real" judge and, thus, not a member of the Bar, writing a friend of the court brief constituted an unlicensed practice of law. Sorry! State Rules of Court say anyone can file a friendly brief; you don't have to be an attorney.

As to Benninghoff's work with federal agencies, it appears that Cox misrepresented the law to Judge Brenner and convinced the Judge to allow him to seize Benninghoff's federal business in addition to the state work. Cox did not disclose to Judge Brenner that *Augustine v. Veterans Administration* — a federal case decided in California — specifically held that the Bar has no jurisdiction over federal agency work.

In addition, as early as 1994, the California Bar, through a position paper issued by the Bar's Office of Professional Competence, Planning & Development, stated that the bar does not view the State Bar Act as covering federal administrative proceedings:

"The State Bar takes the general position that where a non-member is permitted to practice before a federal court (district, appellate, admiralty) or a federal agency (INS, Patent Office), such individual is not engaged in the unauthorized practice of law while performing activities before such federal courts or agencies in California on behalf of clients."

This is exactly what Benninghoff was doing: representing clients before federal agencies (the United States Department of Justice) where he had been specifically permitted to do so by that Department's Probation Unit and his federal sentencing judge. Nevertheless, relying on Cox's word, Judge Brenner allowed Cox to port Benninghoff's business away in a moving van: lock, stock, and barrel.

So, what did the bar do after seizing Benninghoff's clients' records? They completely abandoned every one of the clients, mailing them their papers that they had seized from Benninghoff's office, and, figuratively, telling them to "take a hike." Only God knows how many of these people lost their licenses or otherwise suffered due to the heavy-handed bar tactics.

Benninghoff's case will continue until it is settled by the California Supreme Court. If you wish to assist Mr. Benninghoff in defending himself in this fight, please e-mail me: *bolen@bolenreport.net* You can follow what happens by keeping an eye on *The Bolen Report* (at: *http://www.bolenreport.net*). CPR

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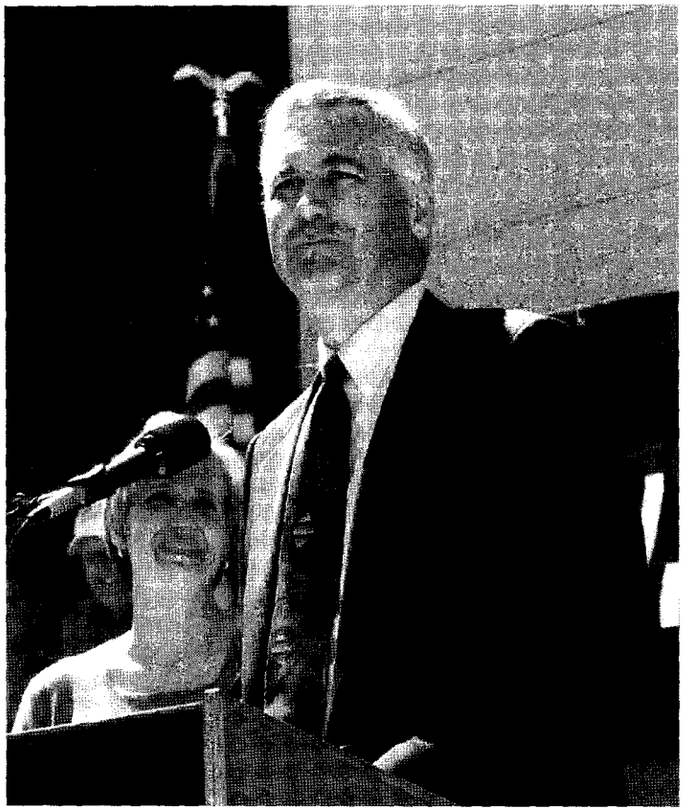
Tom McClintock's Bully Pulpit



by Sam Paredes

The art of economics consists in looking not merely at the immediate but at the longer effects of any act or policy: it consists in tracing the consequences of that policy not merely for one group but for all groups.

Nine-tenths of the economic fallacies that are working such dreadful harm in the world today are the result of ignoring this lesson.

— Henry Hazlitt, *Economics in One Lesson*

In the 60-plus years since Henry Hazlitt pounded out on his pre-computer-age typewriter those lines from his classic contribution to economic and conservative literature, the world has demonstrated their wisdom repeatedly, and not only with regard to economics. In virtually every area of public policy or, for that matter, politics, each passing day provides new evidence that the realms of wisdom and foolishness lie in the alternative courses of either, a, seeing questions and proposed solutions, as best we can, in their full context, as opposed, b, to focusing narrowly on their immediate effect for a particular group while ignoring anything broader, deeper, longer lasting. Case in point:

Sam Paredes, a regular CPR *contributor, is executive director of Gun Owners of California.*

Throughout the 1990s, state Senator Tom McClintock, now a candidate for California lieutenant governor, tirelessly championed repeal of California's Vehicle License Fee, popularly known as the car tax, "a tax," McClintock said at the time, "that long ago ceased to bear any resemblance to its original purpose and intention. It [VLF repeal] would remove a strong disincentive in current law that keeps motorists from shedding older, higher polluting automobiles. It would provide a significant spur to economic activity by reducing the cost of new vehicles in California. It would reduce costs to California families of what is a practical necessity in the Golden State: the family car." The senator thus cited the most obvious benefit of dumping the car tax: reducing the too-heavy burden government places on families and all car owners by taxing a practical necessity. He also, however, cited several less obvious reasons to end the tax:

- good government (policies that cease to serve their original purpose should be discontinued; if politicians want their *current* purposes served, they should justify that to their bosses [*i.e.*, the voters] and, if they can, pass a law to serve them on its own merits),
- eliminating a law perversely working against

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the state's anti-air pollution policies, and

• spurring the economy.

By 1998, with the state's coffers overflowing, Governor Pete Wilson and the Legislature began a phased-in car tax reduction that eventually reduced the tax by two-thirds. Democrats, of course, opposed the change vehemently, their field of vision, as always, tightly constricted to see only the effect of lower taxes on their own power. But, perhaps surprisingly, VLF repeal was also opposed within the business community. A $150 million business tax reduction bill was under consideration at the same time and business leaders reportedly feared cutting the VLF would exhaust support for tax cutting overall, defeating their business tax cut. Now, however, estimates say cutting the VLF has so far saved Californians $25 billion, with about 40 percent of the savings going directly to business. A business's van fleet that now costs its owner $7,000 or $8,000 in annual vehicle license fees would cost $21,000 or $24,000 if Democrats — and powerful elements of California's business community — had had their way. The difference between McClintock's steadfastly supporting, and others' steadfastly opposing, the policy change, was McClintock's proficiency, that others lacked, in "the art of economics": in "looking not merely at the immediate but at the longer effects of any act or policy."

The Republican Alternative

Restoring respect for the broad view in public policy is at the center of what Republicans traditionally offer voters. It is, in a sense, their stock in trade. If they are going to win not merely this or that election, but win any serious measure of control over the political direction of California, it must be on this basis: by convincing a majority coalition that the long term matters as much as the short term, that we must think not just of this or that group that stands to reap immediate benefits from a policy, but of *all* the people and the effect the policy will have on them. The Grand Old Party can never compete with Democrats in bedazzling voters with narrowly-drawn promises to make their every dream come true, and of ending every irritant, through the use of state power. The Dems own the monopoly on short-sighted use of brute force to achieve immediate objectives for particular groups while ignoring long-term effects on the whole population. Demagoguery is the Democrats' private preserve.

Tom McClintock knows this instinctively and therefore doesn't shy away — when most other politicians would pass — from the often difficult, sometimes tedious, job of explaining, patiently and thoroughly, the detailed results likely to come from enactment of complicated policies.

McClintock manages not only to make his points understandable, but to show their strength precisely by presenting their broad context and the reasons for considering the big picture.

But like Ronald Reagan, McClintock brings to this task a powerful ability to articulate even arcane truths in terms everyday people can understand. He manages not only to make his points — the Republican Party's traditional message — understandable, but to show its strength precisely by presenting the broad context from which the message emanates and the reasons it is worth our while to consider the big picture.

"Our generation," McClintock tells audiences, "must study politics that we may restore the liberty that our parents and grandparents expect us to pass on to our children and grandchildren. If we fail, what history will demand of our children and grandchildren, in a society where their only right is to their own thoughts, is simply unthinkable. And be assured, history will find it unforgivable. A generation that is handed the most precious gift in all the universe — freedom — and throws it away — deserves to be reviled by every generation that follows — and will be, even though the only right left to them is their own thoughts. But if we succeed in this struggle, we will know the greatest joy of all — the joy of

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watching our grandchildren secure with the blessings of liberty, studying arts and literature in a free nation and under God's grace, once again.

"Ladies and Gentlemen, isn't that worth devoting the rest of our lives to achieve?"

As a note in passing, for anyone who might consider these words over-stated, the idea that our "only right is to [our] own thoughts" was expressed in pretty much those terms by Sheila Kuehl, evidently as her guide to what is and what is not morally permitted for government to do to people.

Consistent underestimation

Understandably, McClintock's willingness, even eagerness, to go where superficial political wisdom fears to tread, provokes uneasiness, and a consistent habit of underestimation, especially among grizzled political veterans. In his memoir, Lyn Nofziger recalls an early talk he had with political campaign veteran Bill Roberts who was running Ronald Reagan's first gubernatorial race in 1966. "There's something out there," Nofziger said after returning from a trip with Reagan. "I don't know what it is but there's something between Reagan and the people. He's going to be elected governor and someday he might even be president." Roberts, who, Nofziger wrote, "looked on Reagan as a not very smart right-wing actor," answered by saying, "Oh Lyn, what will the poor soul do if he's ever elected governor?" What, indeed?

Roberts misinterpreted Reagan's simple charm and lack of the politician's usual air of self-importance as a sign of simple-mindedness, a mistake not made with McClintock who has for far too long shown a thoughtful, thoroughly competent grasp of difficult issues to allow it. But behind this first mistake, many experienced politicians also mistrust the voters' ability and willingness to do the relatively harder work of understanding conservative ideas and policies. The people, they seem to assume, like bread and circuses, and candidates just waste their time boring the crowd with thought-through positions and lofty ideas. As Dick Armey reportedly once quipped, "Republicans fear being misunderstood by the voters; Democrats fear being understood."

This lamentably cynical assumption seems to be at work in the endlessly repeated phrase "California is too liberal to elect a conservative statewide," believed wholeheartedly no matter, it seems, how many statewide elections conservatives win in California — most recently, in 2003, by Arnold Schwarzenegger (the Schwarzenegger then presented to voters, not the one he has since become). McClintock, like Reagan with Bill Roberts, suffers from this "too conservative to win" prejudice. The voters, it is assumed, want only to be entertained and won't sit still for serious political truth-telling. Thus the pundits were surprised when voters reacted favorably to McClintock during and after the recall. With the show-business professional Schwarzenegger appearing in stark contrast to the careful, thorough, policy-wonk McClintock, it was evidently assumed no one would even notice the senator.

But they did notice him. Surveys continue to show they not only noticed but liked him. They like precisely the integrity they perceive in his determination to tackle tough issues honestly; they like it that he tells people what he believes, skipping the usually *de rigueur* practice of saying only what voters are supposed to want to hear; and they like the strength of character he displayed in refusing to back down when the whole establishment demanded he terminate his gubernatorial candidacy. All of this vindicates McClintock's faith not only in conservative principles as issuing in policies that work, but his faith in the American people as ready, willing, and able to seek out and embrace those true principles in leaders who sincerely believe them and will honestly work to implement them. This is a large part of that "something" Nofziger saw, though he couldn't define it, "between Reagan and the people."

Popularity, funding

Tom McClintock entered this election year running for lieutenant governor with 80 percent

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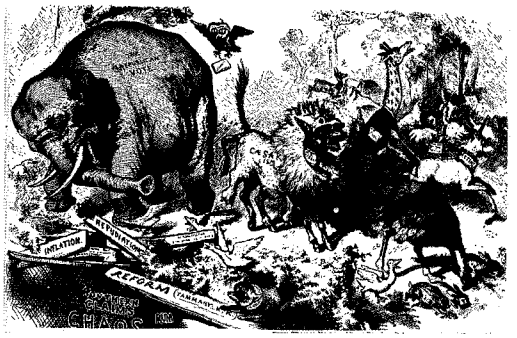
name ID and the best ratio of favorable to unfavorable ratings among voters, at about three-to-one, of any statewide political figure. Second highest is Dianne Feinstein at about two-to-one, with — for comparison purposes — the governor and the re-emerging Jerry Brown, for instance, at about one-to-one.



For the first time in a statewide race, McClintock has good reason to expect to face with adequate funding his Democrat foe in November. He has developed a nation-wide direct mail funding base from the springboard of national attention his recall candidacy attracted. He now has more than $1 million banked — more than he spent in his whole 2002 race for state controller — and expects to have $2 million by the time June campaign reports come out. While McClintock faces no competition for his Party's nomination, Democrat lieutenant governor candidates John Garamendi, Jackie Speier, and Liz Figueroa promise an expensive and probably divisive primary battle. While Garamendi is widely considered the front runner, he reports less cash on hand for his campaign than McClintock, and Speier has raised more than $2 million to use against Garamendi between now and the June 6 Primary.

In 2002, with less than half his current name ID and no funds for the campaign's home stretch, McClintock received more raw votes and a higher percentage of the total statewide vote cast than any other Republican. He lost by a razor-thin 45.4 to 45.1 percent margin, with a difference of 16,811 votes out of more than 6.5 million cast separating him from Democrat Steve Westly.

McClintock expects to be able to raise between $3 and $5 million on his own for this year's general election campaign. Those totals will increase markedly if the governor, who, of course, has his own tough re-election battle to fight, is able to produce the "full funding" for McClintock's campaign that has been promised. Whoever the Democrat nominee is, he or she will be amply funded, but Steve Westly was able to fund his race from his own very deep pockets four years ago, and he is in office only by the election equivalent of a flip of the coin, though he opposed a then-woefully underfunded McClintock. The Democrat nominee for lieutenant governor will enjoy no such advantage this year.

Issues

Among the first things Democrats will do if they re-take the governor's office — count on it — is reverse the three big policy victories achieved near the beginning of the Schwarzenegger governorship: rescinding Gray Davis's tripling of the car tax, repealing the law allowing driver's licenses for illegal aliens, and the partial reform of California's non-functional, anti-business workers compensation system. Republicans, probably, can only hope that Democrat candidates come out and admit, before election day, that these are their goals. On the other hand, if tough primary fights develop at the top of their ticket, pledges to do these things — things that, in their hearts, they desperately *want* to do anyway — might well be heard as the competing camps seek ways to distinguish themselves from their rivals so as to win over the rabidly left-wing Democrat base.

In any event, the car tax, illegals' driver's licenses, and workers comp reform should always be front and center in every Republican campaign, illustrating concretely just what are the real stakes in this election. Tom McClintock will be particularly well positioned to lead with these issues since he has already led with them, most obviously the car tax, for years. He also has developed a great issue for dividing the opposition in his early, consistent leadership to overturn in California the devastating anti-property rights Supreme Court *Kelo* decision. A surprising number of prominent Democrats, including many down-the-line liberals, oppose *Kelo*, knowing that it is their own constituents whose houses will be bulldozed to aid commercial interests.

What Democrats *will* want to talk about, of

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course, is education, calling it underfunded and unloved by Republicans. But their record here is one of unmitigated demagoguery, and Tom McClintock is just the one to point it out. The issue for Californians is not merely, as it is for Democrat candidates, the size of the education budget. The real issue for most voters is the *quality* of education all those dollars buy. In terms of process, that translates into asking how many of our dollars make it to the classroom. The answer, under Democrats, is: not many.

Steve Westly is in office only by the election equivalent of a flip of the coin, though he opposed a then-woefully underfunded McClintock. The Democrat lieutenant governor nominee will enjoy no such advantage this year.

Consider some recent history. On May 17, 2000, the ACLU filed a class-action suit eventually representing more than a million California students, accusing the state of depriving poor, nonwhite, and immigrant children of adequate school supplies. *Mother Jones*, of all publications, reported on the suit in late 2004, noting that San Francisco school children were being sent home without homework "because there weren't enough books for students to take home." In addition, *MoJo* reported, other features of these schools included "chronically clogged toilets, water fountains with discolored and foul-tasting water, mice-infested classrooms without heat." Hence, the ACLU's 2000 lawsuit. How did our education-loving Democrats respond? Let left-wing *Mother Jones* tell the story:

> ... then-Governor Gray Davis, a Democrat who claimed education was his top priority, hired a high-priced law firm to fight the suit, dragging it out over four years and ringing up close to $20 million in legal fees. The state's tactics included lining up experts to testify that textbooks and heat were not crucial for learning, and subjecting students, some as young as eight, to days of harsh questioning, often reducing them to tears.
>
> But soon after taking office, California's Republican [!!!!] governor, Arnold Schwarzenegger, called off the dogs. By August, a $1 billion settlement had been reached in [the ACLU case] *Williams v. California*. The state agreed to immediately spend $188 million to buy books for and make repairs at the lowest-performing schools. The settlement also creates a system for students and teachers to lodge complaints about substandard conditions, and imposes a 30-day deadline for resolving them.

Does Tom McClintock address this issue? Consider excerpts from an op-ed he wrote last May, when Republicans were proposing only $10,084 per student on education compared to the more than $11,000 provided in the latest Schwarzenegger proposals.

> Maybe — as a temporary measure only — we should spend our school dollars on our schools. I realize that this is a radical departure from current practice, but desperate times require desperate measures.
>
> The governor proposed spending $10,084 per student from all sources. Devoting all of this money to the classroom would require turning tens of thousands of school bureaucrats, consultants, advisors and specialists onto the streets with no means of support or marketable job skills, something that no enlightened social democracy should allow.
>
> So I will begin by excluding from this discussion the entire budget of the State Department of Education, as well as the pension system, debt service, special education, child care, nutrition programs and adult education. I also propose setting aside $3 billion to pay an additional 30,000 school bureaucrats $100,000-per-year (roughly the population of Monterey) with the proviso that they stay away from the classroom and pay their own hotel bills at conferences.
>
> This leaves a mere $6,937 per student, which, for the duration of the funding crisis, I propose devoting to the classroom.

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To illustrate how we might scrape by at this subsistence level, let's use a hypothetical school of 180 students with only $1.2 million to get through the year.

We have all seen the pictures of filthy bathrooms, leaky roofs, peeling paint and crumbling plaster to which our children have been condemned. I propose that we rescue them from this squalor by leasing out luxury commercial office space. Our school will need 4,800 square feet for five classrooms (the sixth class is gym). At $33 per foot, an annual lease will cost $158,400.

This will provide executive washrooms, around-the-clock janitorial service, wall-to-wall carpeting, utilities and music in the elevators. We'll also need new desks to preserve the professional ambiance.

Next, we'll need to hire five teachers — but not just any teachers. I propose hiring only associate professors from the California State University at their level of pay. Since university professors generally assign more reading, we'll need 12 of the latest edition, hardcover books for each student at an average $75 per book, plus an extra $5 to have the student's name engraved in gold leaf on the cover.

Since our conventional gym classes haven't stemmed the childhood obesity epidemic, I propose replacing them with an annual membership at a private health club for $39.95 per month. This would provide our children with a trained and courteous staff of nutrition and fitness counselors, aerobics classes and the latest in cardiovascular training technology.

Finally, we'll hire an $80,000 administrator with a $40,000 secretary because — well, I don't know exactly why, but we always have.

Our bare-bones budget comes to this: 5 classrooms: $158,400; 150 Desks @ $130: $19,500; 180 annual health club memberships @ $480: $86,400; 2,160 textbooks @ $80: $172,800; 5 C.S.U. Associate Professors @ $67,093: $335,465; 1 Administrator: $80,000; 1 Secretary: $40,000; 24% faculty and staff benefits: $109,312; Offices, expenses and insurance: $30,000. Total: $1,031,877.

This budget leaves a razor-thin reserve of just $216,703 or $1,204 per pupil, which can pay for necessities like paper, pencils, personal computers and extra-curricular travel. After all, what's the point of taking four years of French if you can't see Paris in the spring?

The school I have just described is the school we're paying for. Maybe it's time to ask why it's not the school we're getting.

Tom McClintock commands a bully pulpit, to borrow Teddy Roosevelt's apt phrase. He can address the issues, engage the people, get a crowd cheering, as well as or better than any Republican statewide figure, including the governor. He does not, however, suffer from the governor's history of loud talk followed by no action, with the resulting loss of credibility it has brought our chief executive. McClintock, on the contrary, is known precisely for saying what he means, for working to keep his promises, and for insisting on real progress and suffering no false measures, no papering over, no phony Potemkin Village charades to fool the people while the politicians really do nothing.

A final point: the usual pattern is for all down-ticket races to fade into oblivion behind the glare focused at the top. A measure of that is inevitable, but this year Arnold Schwarzenegger has a particular problem with his GOP base. He must feature Tom McClintock prominently in his campaign, especially whenever he wants to send messages to rank-and-file Republicans. He has no other way of firing them up to go to the polls. He knows McClintock can do that, as well as contribute a sense of integrity to the "ticket" that the governor has lost the ability to supply himself. And the senator knows a Schwarzenegger victory is the best way to bring about his own. He will do whatever he can, without compromising his integrity, his strongest political asset, to insure a Schwarzenegger win.

McClintock's lieutenant governor candidacy gives Republicans a chance to recover from the squandered opportunities of the recall, a chance to make their bedrock case to the voters: look beyond the demagoguery to the complete effects of government, remember *all* the people and stop listening only to the loudest special interests, especially government union bosses. *That* is California GOP politics, 2006, in one lesson. CPR

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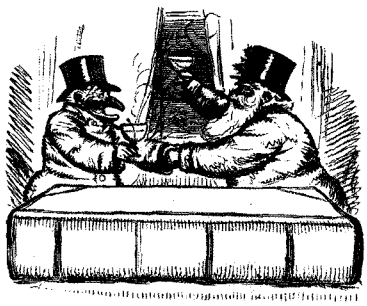

CRITICUS

Gone to Earth

BY G.B. TENNYSON

I told you I was ill.
(Inscription on a tombstone)

AT LAST Criticus is able to honor a promise made several issues back, namely, that he would again provide a necrology for the previous year, a feature Constant Readers have called for, if not with vigor at least with some yearning. That previous year came to an end three months ago, so it is time for a necrological accounting of the year 2005, with a few late entries from 2004. Note that as in the past Critical necrologies are not in the main records of the passings of the great and famous. These are taken care of by the daily press. Criticus likes to concentrate on the odd, the offbeat, the eccentric. No wonder then that so many are British. Criticus also makes no claim to completeness. These brief lives — or deaths, as the case actually is — concentrate on some remarkable aspect of the person in question that, at least in the Critical view, illuminates the entire subject or provides some passing amusement for readers. (Age at death is given in parentheses after each name.)

The McGillycuddy of the Reeks (56)

The most notable thing about Richard McGillycuddy of the Reeks is precisely his surname. The Reeks was the name of the family's ancestral estate in southwest Ireland and was evidently incorporated into the McGillycuddy name long before there were any records. In the 1980s McGillycuddy of the Reeks sold the Reeks but retained his surname. Although he was active in the Council of Irish Chieftains, which recognized his ancestral title, he didn't much care for the Irish in general, and they in turn were put off by his upper-class English accent and demeanor. Criticus wonders what was made of his name by the French among whom he lived for many years as a consultant to prospective British property buyers. Even more perplexing is what, say, an American motel clerk might make of a man who presented himself at the desk and announced that he was "The McGillycuddy of the Reeks."

Prince Dado Ruspoli (80)

Alessandro Maria Galezzo Ruspoli, Ninth Prince of Cerveteri, Ninth Marquis of Riano, and 14th Count of Vignanello was one of the leading figures of the decadent high society world on which Federico Fellini based his celebrated film *La Dolce Vita.* A notorious womanizer and frequenter of all the fleshpots from London to Rome with special favorites on the Côte d'Azur and Capri, he drove about in a Maserati or, when promenading, sported a parrot on his shoulder.

G.B. Tennyson is CPR's official necrologist, a post he tries to enliven with the occasional droll story about the dearly departed.

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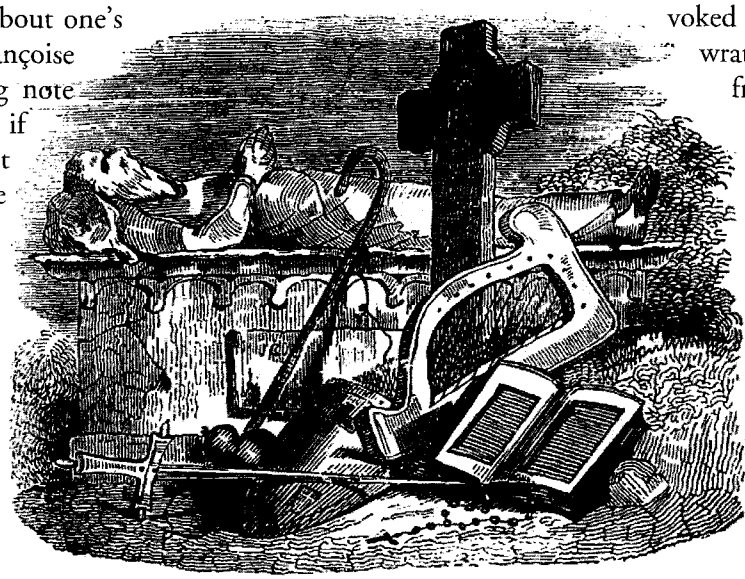
He inherited the family's splendid Palazzo Ruspoli on the Via del Corso in Rome, but he had been so profligate with his riches, largely through gifts to charity and friends, that by 1990 he had to sell the Palazzo. It is now a museum. Once he was asked, "Haven't you ever worked?" "No," he replied, "I've never had the time."

Françoise Sagan (69)



It says something about one's age if the name Françoise Sagan strikes a strong note — or, for that matter, if it doesn't. She burst upon the literary scene at the age of 18 in 1954 with the novel *Bonjour Tristesse,* and for two decades or so she reigned as the epitome of radical chic. Vanessa Redgrave admitted that she took up smoking when she read that Françoise Sagan constantly smoked Gauloises and had only a cup of coffee for breakfast. Sagan lived a life of intentional decadence, dashing about in expensive sports cars, frequenting the casinos and the night life of the Riviera, indulging in heavy bouts of drinking whisky and sniffing cocaine along with many sexual escapades. In those heady years she wrote three more bestsellers, *Un Certain Sourire* (you may know the title from the Johnny Mathis recording, "A Certain Smile"), *Aimez vous Brahms?* and *La Chamade.* She even stylishly affiliated herself with left-wing politics. When a devoted revolutionary inquired, "What's Comrade Sagan doing in a Ferrari?" she blithely replied, "It's not a Ferrari, it's a Maserati." In the years from the '70s on, she sobered up somewhat and settled down somewhat and wrote relatively little. She gave up drinking and even asked the Ministry of the Interior to ban her from casinos. Even so, in 2001 she was fined for tax evasion, proving, one supposes, that certain kinds of rebels are rebels forever.

Humphrey Carpenter (58)

I include here notice of Humphrey Carpenter's death despite the fact that it was noted in the papers, albeit briefly on this side of the Atlantic and, not surprisingly, extensively on the other side. I point it out chiefly for Inklings enthusiasts. Carpenter was a prodigious writer, having produced biographies of figures as various as W.H. Auden, Ezra Pound, and Benjamin Britten, and even the Archbishop of Canterbury. But for constant readers I stress his biography of J.R.R. Tolkien and his group biography of the Oxford Inklings. Carpenter, the son of the Bishop of Oxford, grew up in the university town and resided there also in adulthood. Many of his biographies provoked anguished cries and even wrath from their subjects and from the literary world. Criticus has but one quarrel with Carpenter, and that stems from his Inklings biography. It is full of much information and much understanding of the setting and style of Inklings Oxford, although Carpenter, born in 1947, could have had no direct contact with most of his subjects. What displeased Criticus was Carpenter's conclusion that in the final analysis the Inklings did not constitute any kind of movement or indeed any kind of coherent intellectual group. No, he concluded, the Inklings were nothing more than the "friends of C.S. Lewis." Wrong, I say. But thanks for the short biographies in the appendix.

Thady Ryan (81)

Another Irishman with interesting name associations. He was the master of the Scarteen Hounds, the most famous pack of foxhounds in Ireland. The hounds were named after the Ryans's house, Scarteen, in Knocklong on the Limerick-Tipperary border. If all that Irishness is more than you need, consider this little known fact. Because of their coloring the Scarteen hounds were known as the Black and Tans. It was from this term that the paramilitary force sent to Ireland to combat pro-nationalist terrorists in 1920 got the name. Odd that so Irish a designation came to be applied to a body assigned to suppress Irish nationalism.

Bobby Short (80)

Singer and pianist Bobby Short's death was indeed fairly widely noted, so mention here is more homage than news. He was a grandson of a slave, born in

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Danville, Illinois, and self-taught as a piano player and singer. He performed throughout the United States and in London and Paris, but his real fame resides in his more than thirty-year stint at the Carlyle Hotel in New York where he specialized in the songs of Cole Porter and Noël Coward, both of whom considered him the finest interpreter of their music. He recorded albums of the songs of both of those composers as well as of many of what were the standards of the middle years of the twentieth century. He managed to make his renditions more than entertaining, for they also called forth the serious, usually overlooked side of popular music.

Christopher Fry (97)

One can hardly say that the death of Christopher Fry passed unnoticed, but one can say that the most notable thing about it was the general feeling of surprise that he had not died long ago. To be sure, ninety-seven is an age when many have been forgotten. But Fry had been a highly celebrated playwright in the '40s and '50s, thought by many to be the herald of a revival of a new Elizabethan age of verse drama infused with Christian thought and sensibility. Such plays as *The Lady's Not for Burning* (1948) and *Venus Observed* (1949) were outstanding successes that brought Fry to the attention of the leading actors of the day and also to such serious authors as T.S. Eliot.

By the mid-'50s he was considered passé as the Angry Young Men took over the theatrical limelight, and from the '60s on he was virtually forgotten. There were occasional regional revivals of his plays, but he never again attained celebrity and he wrote relatively little for the stage after the '50s. It must have called a smile to his face when Margaret Thatcher uttered her variant of his play title as she affirmed her political position by declaring "This lady's not for turning."

Count Lennart Bernadotte (95)

The grandson of King Gustav V of Sweden lost his princely titles as well as the chance of ever succeeding to the throne when in 1932 he married a commoner. But gardeners and flower lovers can rejoice that the Count was given as a gift the island of Mainau at the northwestern end of Lake Constance, where Germany, Austria, and Switzerland all share a border (Mainau is in German territory). The island had come under Swedish rule during the Thirty Years' War and eventually passed to the ownership of Baden and eventually as a gift to Bernadotte from his grandmother, the daughter of the Duke of Baden. The 111-acre island has a uniquely mild microclimate which Bernadotte exploited to the full creating what came to be called the "Island of Flowers." It contains 6,000 types of orchid, 800 species of hyacinth, 300 varieties of rhododendron, and 30,000 roses, as well as a palm house, a huge butterfly collection, and a quarter of a million sunflowers. Some 350,000 flowers bloom there every summer. Yearly the island draws 1.7 million visitors. Count Bernadotte appears to have accomplished more as a horticulturist than any recent King of Sweden has in any field of endeavor.

What displeased Criticus was Carpenter's conclusion that the Inklings did not constitute any kind of movement or intellectual group, but were nothing more than the 'friends of C.S. Lewis.' Wrong, I say.

Melitta Norwood (93)

Another one of those deplorable cases in which a known spy was permitted to carry on as a plain citizen. Norwood began spying for the Soviets in the 1930s and continued to do so until 1972. Her identity as a spy was made public in 1999 when it was also revealed that the British authorities had known about her activities for years and had done nothing about it. The reason was that it "might have led to criticism for harassing an old lady." For her part, Norwood took the whole business of exposure as a joke and asserted that she did not regret her actions because "Soviet Communism was a good experiment, and I agreed with it." With governments like this one wonders how the Soviet Union ever went under.

Dame Rosemary Murray (91)

I include this academic worthy, who was the first woman vice-chancellor of Cambridge University, for a quite trivial reason. She was the grand-daughter of the Rev. Dr. W.A. Spooner whose verbal confusions gave us the word "spoonerism." You know, such comic transpositions as "It's the Queen's birthday; the hags are all flung out." Scores of such statements have been attributed to Spooner, but in recent years some scholars have questioned many such as not truly by Spooner, claiming they were conscious inventions by witty undergraduates. I can almost believe it's true, but I

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very much wish that all spoonerisms really came from Spooner.

Brian Cookman (58)

Another obscurity, this one a musician, celebrated in the Critical mind for having revived an old fertility dance performed on Plough Monday, the first Monday after Twelfth Night. The ritual dates back hundreds of years, possibly even to the time of the Danish incursions, but had fallen out of use. Cookman found two old Molly Men, as the dancers were called, who taught him the ritual designed to insure good crops. In the dance one workman was dressed as a woman called Molly, the others wore blackface to disguise themselves from their bosses. Their dance was designed to insure a good crop for the coming year. So far they have escaped censure for racial insensitivity.

William Donaldson (70)

Donaldson has appeared in these pages before as the author of *Rogues, Villains, and Eccentrics,* a massive compilation of brief biographies of notorious persons in British history. Donaldson wrote much else, but to the Critical mind his finest achievement was the creation of the character Henry Root. The fictional Root wrote real letters to the great and famous, often insulting, often fatuous, always funny. The astonishing thing was that great numbers of recipients of Root's letters took them seriously and responded seriously. He wrote one television personality that she was a "fat idiot" and her show "a disgrace." He received a reply saying "hearing from viewers like yourself is a tremendous morale boost for all of us." Not surprisingly, when the collection of these letters was published as *The Henry Root Letters* in 1980 it became the number one bestseller of the year. It was followed by three other compilations of Root letters. Donaldson's love life was extensive and tempestuous. He declared, "I'm genuinely shocked by my own behaviour."

Gavin Lambert (80)

Lambert's death was so widely covered (the *L.A. Times* gave him more than half a page with an accompanying picture) that I note it here only to point out that his novel *Inside Daisy Clover* when it was made into a film included the haunting and poignant song "You're Gonna Hear from Me." (Music by André Previn, lyrics by Dory Previn.) The song was virtually the autobiography of Natalie Wood who played the title character in the film.

Frances Langford (92)

If you have to be of an age to remember Françoise Sagan, you need to be that or perhaps a little more to remember Frances Langford. She was the songbird to the armed forces as part of Bob Hope's countless tours for the military in the Second War, Korea, and Viet Nam. Her signature song was "I'm in the Mood for Love," which the soldiers, remembering the girls they left behind, would sing along with her.

George Sayer (91)

Sayer had studied under C.S Lewis at Oxford and subsequently became a close friend. Sayer was the author of *Jack: C.S. Lewis and His Friends,* one of the best biographies of Lewis. Sayer, described as an "indifferent driver" who often took the most circuitous routes to avoid traveling on the motorway, frequently served as Lewis's chauffeur since Lewis did not drive, despite what Anthony Hopkins as Lewis was shown doing in *Shadowlands.* Sayer greatly disliked the film and disliked even more Hopkins's portrayal as Lewis.

Paul Ricoeur (92)

One of the most distinguished philosophers of the twentieth century, Ricoeur nevertheless has remained largely unknown to the general public. He is chiefly thought of as a phenomenologist but his interests were more wide-ranging than that. He considered two questions to be central to philosophy: "Who am I?" and "How should I live?" He was drafted into the French army at the outbreak of the Second World War, but he was captured during the German invasion of France and spent the next five years in a prisoner of war camp. During that time he read deeply in philosophy, especially the works of Jaspers, Heidegger, and Husserl, ironically all of them German and one of them, Heidegger, still criticized as being pro-Nazi. For his work in organizing reading classes and study groups in the camp Ricoeur was later awarded the *Croix de Guerre.* Can this be true of any other philosopher?

The Rt. Rev. Roderick Wright (64)

He was the disgraced former Roman Catholic Bishop of Argyll and the Isles in Scotland. His disgrace came from his having run off in 1996 with his housekeeper, Kathleen MacPhee, a divorced mother of three whom he had met at Lourdes, of all places. In the ensuing scandal Wright confessed that had also had a relationship with one Joanna Whibley by whom he had a son. Another housekeeper claimed that Wright also had relationships with four other women.

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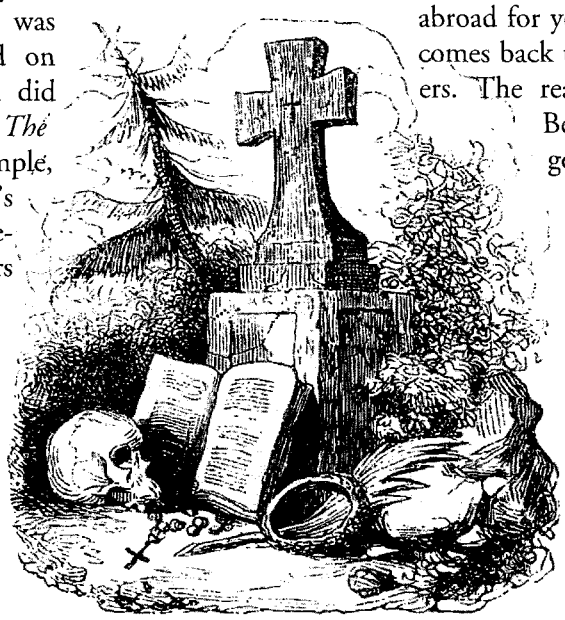
Even Hollywood has not taken up this story. Wright wrote an autobiography aptly titled *Feet of Clay.*

Alastair Forbes (87)

An extraordinary character on the social and literary scene of postwar Britain, Alastair Forbes knew everyone in society and journalism and, it seems, all their secrets. These latter he was given to revealing, often in the most scathing way and often in print. Dinner parties and country-house weekends were frequently broken up by Forbes's viciously insulting behavior. In print he was constantly close to libel and on some occasions the wounded did actually bring libel actions. *The Spectator* magazine, for example, had to pay dearly for Forbes's vicious criticism of Dame Rebecca West. And always editors had to struggle through Forbes's almost impenetrable longhand and his even more difficult interminable sentences. One editor would chop up sentences that ran more than a hundred words. Ali, as he was known, constantly used foreign words and phrases that would baffle almost all readers, and one editor imposed a rule that Ali could use the word *hochgeboren* no more than three times in one sentence. Criticus sometimes runs similar risks with the August Editor of *CPR,* but compared to Forbes, Criticus writes with Hemingwayesque economy.



All of this must seem remote to most readers, as Forbes was scarcely known in America. But the one fact that they can grasp with whatever mixture of delight and horror they find in it is that, although born and educated in England, Alastair Forbes was of American stock and heritage. In fact, he was not only related to the Roosevelts, his sister was the mother of John Forbes Kerry, making the onetime presidential candidate Ali's nephew. Forbes frequently boasted of his Roosevelt connection, so he rather deserved the acid remark of a friend who noted that it was just as well that in his final years Forbes was too frail to make much of his connection with Kerry. Another said with some relief that this time Forbes would be unable to write scathing letters to the editor about the obituaries his death evoked.

Lady Sibell Rowley (98)

The last of the four Lygon sisters whose family inspired Evelyn Waugh to write *Brideshead Revisited.* The ins and outs of the relationships, marriages, intrigues, and infidelities of this family are too complicated to go into here, but one aspect will amuse or even shock most readers. In *Brideshead,* you will remember, Lord Marchmain has lived abroad for years with his Italian mistress and comes back to Brideshead only as death hovers. The real-life model was the 7th Earl Beauchamp, the father of the Lygon children. It turns out that Lord Beauchamp was forced by his brother-in-law, the Duke of Westminster, to leave the country because of his scandalous behavior with footmen and many others. The duke tried to explain the circumstances to his sister, Lady Beauchamp, but she failed to grasp the point. She said in some bewilderment that her brother "says that Beauchamp is a bugler."

Ian Weston Smith (87)

This worthy would be of but slight interest to the Critical faithful except for helping to illustrate one of the many oddities of British surnames. Now that we are all familiar with hyphenated surnames because they have been taken up by professional female athletes and sundry feminists, we have also had to become familiar with non-hyphenated but nevertheless double surnames as in the case of Camilla Parker Bowles, which is to say that her surname, before her marriage to Prince Charles, was Parker Bowles, as it still is for her ex-husband and their children. Consider then the complexity of such an arrangement for Americans in the Second War. Ian Weston Smith had escaped from a German prison camp and made his way to the advancing American army. He was shown into the officers' room where the American officer said, "Take a chair, Captain Smith." He replied tersely, "The name is Weston Smith." "In that case," said the officer, "take two chairs." He was thereafter known in his regiment as "Two chairs Weston Smith." Score one for the Yanks. CPR

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First Things

Good

by John Kurzweil

Among progressive people, it is considered rather awkward to use seriously such words as "good" and "evil." Communism has managed to persuade all of us that these concepts are old-fashioned and laughable.

— Alexander Solzhenitsyn, speech to the AFL-CIO, July 9, 1975

Americans, especially conservatives, should never feel awkward standing up for good as something real, as the essence of our cause. The left, certainly, is never bashful about proclaiming its opposition to good, about declaring it "old-fashioned and laughable." *New York Times* columnist Anthony Lewis called Ronald Reagan's landmark "Evil Empire" speech the "worst" ever delivered by an American president. Lewis was merely applying standard left-wing usage, under which good and evil do not exist as objective realities but are determined on a case-by-case basis according to the requirements of ideological expediency — nonsense that Reagan's speech implicitly repudiated. For the left, Solzhenitsyn said earlier in the address quoted above, "depending upon circumstances and the political situation, any act, including murder, even the killing of hundreds of thousands, could be good or could be bad. It all depends upon class ideology."

John Kurzweil is CPR's *editor.*

Notice that the left does not endorse some alternative notion of good in opposition to traditional western, mostly Biblical, conceptions of it. It opposes good itself, denying its very existence. It does so by muddling together two quite separate questions: one, is good real? and, two, is it thoroughly, unfailingly knowable by all men at all times? They insist that, because we cannot all know and agree on exactly what is good in every situation, good has no reality. This is the equivalent of saying that a student's inability to solve a mathematics problem proves that no solution to it exists or can be known for sure. They thus proceed to demonize as a crypto-Nazi anyone defending *anything* as knowably good. Their point isn't to distinguish real from mistaken ideas of right so as do what is really right, but to banish the notion we can ever be actually right at all.

But it is not hubris to proclaim the reality of objective good. On the contrary, distinguishing good from tyrannical expediency lies at the foundation of a free society. It precedes any establishment of the rule of law rather than of men. On his deathbed, Napoleon reputedly said his critics wanted him to behave "like George Washington," a man who could have proclaimed himself emperor or king or whatever pleased him. It pleased Washington to proclaim the *good* of the people, a good that required him to humble himself as a servant of the republic, not its master.

No compromise is possible on this question of good: either it is real or it is nothing. And if real, it is irresistible; if imaginary, it has no power at all. As usual, the left appreciates this truth better than conservatives and brooks no compromise on its self-proclaimed right to declare between good and evil (no matter how horrific and impolitic the implications: regarding partial birth infanticide, for instance). The most bitter political conflicts are less about specific policy alternatives than over this far more fundamental question — this question of first things — pitting good against expediency. Ted Kennedy's bizarre antics throughout the Roberts and Alito hearings, demanding political activism as the first requirement for sitting among the nation's top defenders of the law, confirm it.

Conservatives possess the moral high ground in every debate, as it were, by default: merely by saying there *is* a moral high ground against opponents who maintain none exists. *They* are not bashful about their hatred of good; we should never be ashamed to proclaim that we are on good's side.

Next: Life. CPR

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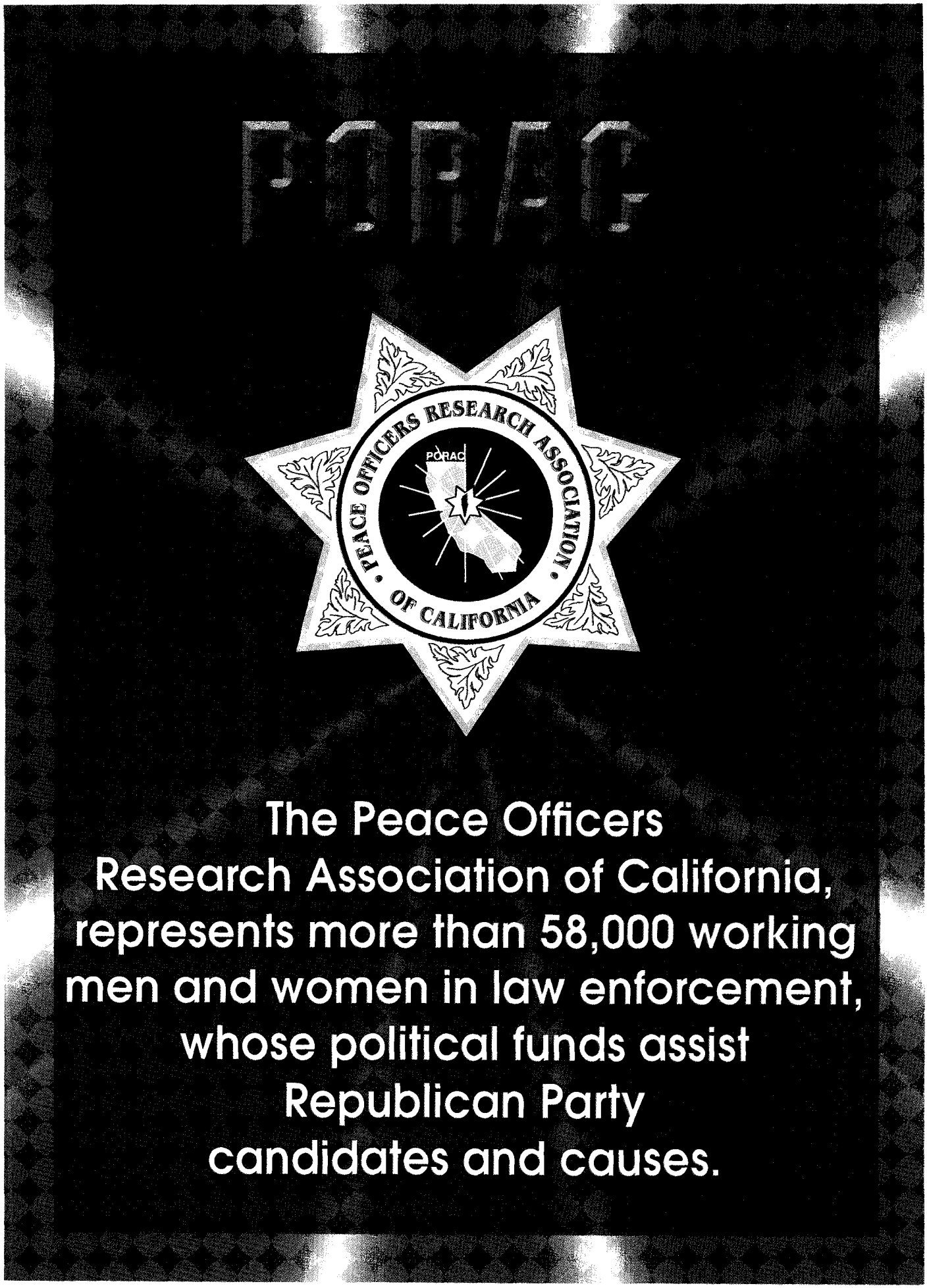

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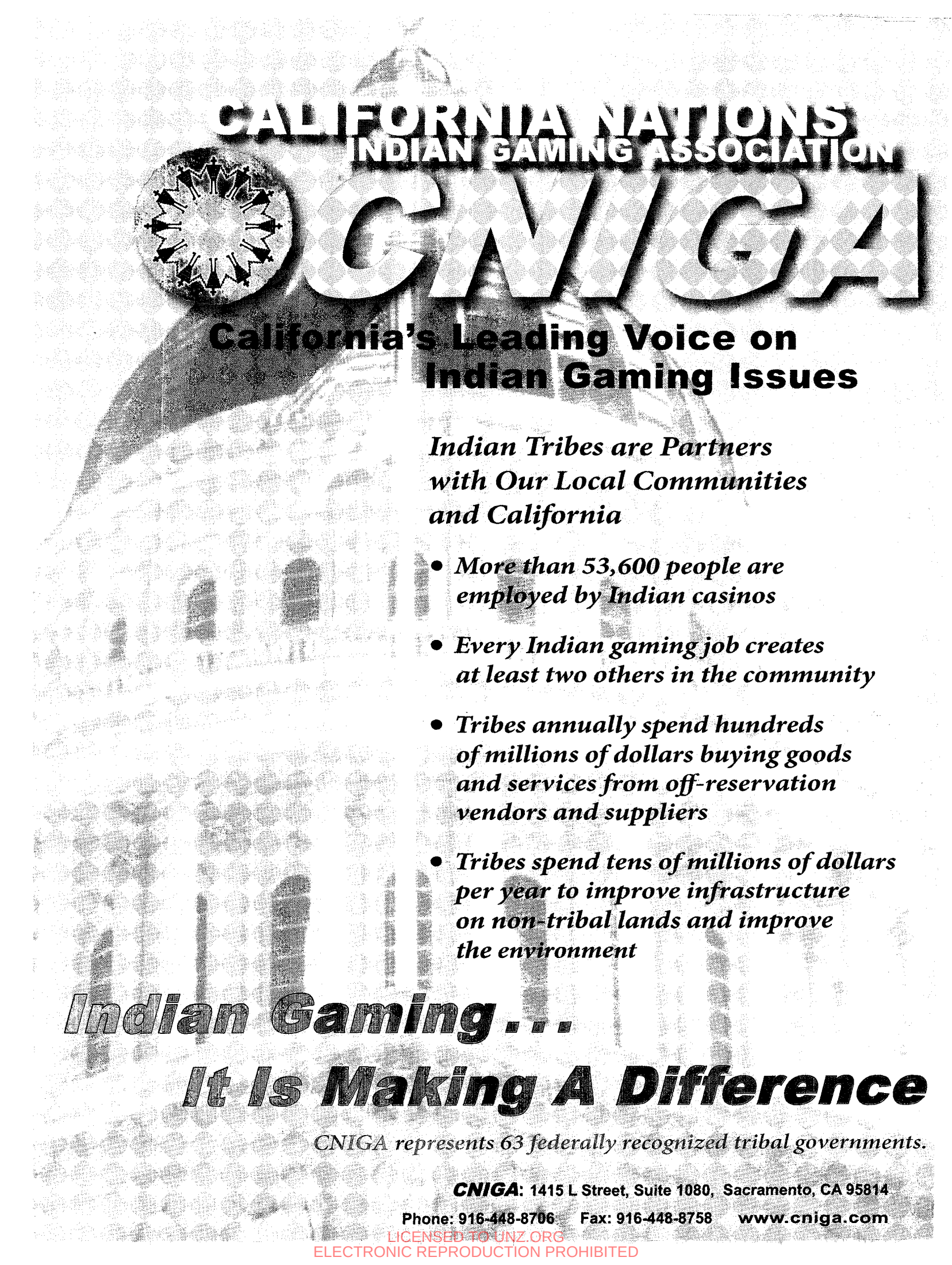
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